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PROVINCE OF ONTARIO
ROYAL COMMISSION
ON
THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.
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DATE
31 October 1966

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Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into And
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice G.A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on
Monday, October 31, 1966.

APPEARANCES:

| | |
|------------------|---------------------------|
| W.Z. Estey Q.C.) | |
| and) | Counsel to the Commission |
| H.D. Guthrie) | |

| | |
|------------------|----------------------------------------------|
| C. R. Osler Q.C. | Internation Nickel Co. of Canada Limited. |
|------------------|----------------------------------------------|

| | |
|-----------------|------------------------|
| W.R. Kerr) | Workmen's Compensation |
| A.G. MacDonald) | Board |

| | |
|---------------|-----------------------------|
| G.A. Johnston | Secretary to the Commission |
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1 --- At 10:00 A.M., the Hearing Commenced.

2 THE COMMISSIONER: Yes, Mr. Estey...

3 MR. ESTEY: In the notes for today we are
4 going to deal with the individual complainants who filed
5 briefs before the Royal Commission, and after that we
6 have some data and information to deal with through Mr.
7 Kerr of the Board, and I believe there is at least one
8 brief which has not been dealt with completely. The list
9 of people who have filed briefs with the Commission who
10 have not been here include A. & T. Wrecking and Salvage
11 Company, a proprietorship in demolition, Mr. Campbell,
12 Mr. Charity, Mr. A.L. Court, Mr. M.J. Dooley, Mrs. H. King,
13 Mr. Lewis, Mr. R.J. McKinstry, Mr. Murdo Martin, Neptune
14 Meters, that is an excerpt from a letter, Mr. C. Pifer,
15 Mr. M.J. Pollett, another man in the demolition business,
16 Mr. M. Rice and Mr. A.V. Walker.

17 THE COMMISSIONER: Have we any appearances?

18 MR. ESTEY: I think there is only one, whom
19 I am aware of, who is here. I believe you, sir, filed a
20 brief?

21 MR. PIFER: Yes, sir, I have.

22 MR. ESTEY: Would you like to come forward,
23 Mr. Pifer?

24 MR. JOHNSON: What is your name please?

25 MR. PIFER: Conwell Pifer.

26 THE COMMISSIONER: Have we the evidence
27 submission here, Mr. Johnson?

28 MR. JOHNSON: It is in there, I believe.

29 THE COMMISSIONER: It is in here, is it?

30 Mr. Pifer, as I think I told you -- I don't see my reply



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1 to your submission here -- but it doesn't come within
2 my province to stand on appeal, but your letter contains
3 some general problems of policy that you want to put be-
4 fore this Board and, if in doing so, it is necessary to
5 relate your own circumstances that is perfectly all right
6 but you understand from my letter that so far as decisions
7 within their province, by the Workmen's Compensation
8 Board are concerned, my terms of reference exclude my
9 dealing with matters of detail which the Board have a
10 right to deal with, but I am interested in the other mat-
11 ters you raise in your submission and you can present it
12 in whatever way you wish.

13 MR. PIER: I have not prepared anything
14 further in a written way, other than what I presented to
15 you in letters. I have your letters in reply to these
16 letters and I understood, or thought I understood, from
17 the very beginning, from the published notice in the
18 paper that you had been appointed to conduct a hearing. I
19 thought I understood your limitations and it has been sub-
20 stantiated by your letters. I think I understand your
21 position clearly, however I am of the opinion that in-
22 dividuals encounter these difficulties that groups do not,
23 and I have been progressing this claim for seven years. I
24 contend that according to the compensation laws I am
25 entitled to compensation. My claim was placed with the
26 Compensation Board by the Claims Department of the Rail-
27 way, with their Headquarters in Winnipeg, and they sent
28 an investigator down to Fort William and investigated the
29 claim thoroughly, while I was in the hospital.

30 I made a statement prior to that -- no, it



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1 was after I got out of hospital -- that the investigator
2 came down, but I was hospitalized for what the doctor
3 termed a torn ligament of the heart. That has carried
4 through in all my statements. However, the Compensation
5 Board when they sent me a form to fill in, I included
6 that, the same as I had to the local representative, that
7 is the official -- the man in the official capacity --
8 under which I worked in Port Arthur terminal, and to the
9 investigator, and that is how the claim originated.

10 Well, the Compensation Board promptly noti-
11 fied me that the claim had been rejected and following
12 that I appealed it, and in a following letter they stated
13 was not a torn ligament of the heart as I had stated.
14 I wrote to them and asked them to tell me what it was,
15 but they would ignore all my questions, and I eventually
16 learned that the doctor that attended me in the hospital
17 -- in fact I went to him and he said he used scientific
18 medical terms in his report which he sent to the Compens-
19 sation Board, but he wouldn't tell me what it was.

20 From a Mr. Cross, Solicitor out of the
21 Board's office, a couple of years ago he told me he had
22 reported myocardial infarction. I had never heard of it
23 before. However, the dictionaries have a definition for
24 it, the college dictionaries as well as medical diction-
25 aries. I have consulted the data in the library, even to
26 the extent of getting a copy and reading the Compensation
27 Act from beginning to end, and I believe I can understand
28 what I read.

29 Now the Compensation Board continually and
30 persistently maintained that my accident, as it is called,



1 was not a result of or in any way related to my occupa-
2 tional employment, but I know that is where it occurred.
3 In checking the Compensation Act, there is a clause in
4 there, Chapter 437, I believe, which states and I cannot
5 quote it

6 THE COMMISSIONER: Here is a copy if you
7 want it.

8 MR. PIFER: I will read it again. I had
9 copied it but I will look at 437. It is listed under
10 Presumptions. Perhaps you can read it, this Chapter 437,
11 as I don't know where to find it in here.

12 THE COMMISSIONER: As to accidents?

13 MR. PIFER: It is listed under "Presumptions"
14 and it says where the accident arose out of the employ-
15 ment, unless the contrary is shown, it shall be presumed
16 that it occurred in the course of the employment, and
17 where the accident occurred in the course of employment,
18 unless the contrary is shown, it shall be presumed it
19 arose out of the employment.

20 Now I know it occurred in the employment.
21 They have stated that it hasn't been shown by me that it
22 occurred there, and when I found that written in the Act,
23 I discovered it placed the onus on the Compensation Board
24 to show that it hadn't, or it would be presumed that it
25 did. That places them in the same position. I know it
26 occurred there and I have asked them to tell me where it
27 was and where it did occur. They didn't question my
28 permanent disability and I have been pressing for a Com-
29 mission of the Provincial Government through the Premier's
30 office, and written to his members for the last several



1 years to appoint a Commission to investigate my claim,
2 and that is the only one I am familiar with, but from
3 general reports I know of others where there has been
4 general dissatisfaction. But it would appear, and it is
5 practically established, that in fact in one of my letters
6 to the Compensation Board I stated I was insured under
7 the Compensation Act, and the reply to that was that not
8 one cent was paid by the workmen, and it would appear
9 that that is right as far as the railway worker is con-
10 cerned, and I will use the word "it appears" that the
11 payroll of the railway worker is not being taxed, and
12 that is where the difficulty has been with railroad wor-
13 kers in general. Unless they are bedridden, or have an
14 external injury which is visible, it is hard to establish
15 an internal injury and my injury is internal. I am
16 handicapped by a shortness of breath and it would appear
17 that our difficulty lies in the fact that we, as railway
18 workers, have to meet the Medical Board of the Railway
19 twice. Once, separate and apart from the Medical Depart-
20 ment of the Compensation Board and then with them sitting
21 in, and they have the Regional Chief Medical Officer of
22 the Western Region, from Winnipeg, who has sat in at two
23 meetings I have attended and he has helped.

24 THE COMMISSIONER: Mr. Pifer, following
25 your letter I asked for a report because I consider this
26 a very serious allegation. I asked for a report from the
27 Workmen's Compensation Board and that report states what
28 happened there. The doctor was paid by the industry and,
29 of course, just as you have a right to appeal, the industry
30 has a right to appeal, and you have a right to bring what



1 evidence you choose upon appeal, and so has industry; and
2 I am assured in that particular instance that doctor was
3 brought there to represent the industry or to give evi-
4 dence for the industry on this matter, but he did not sit
5 as one of the appeal board and no outsider has ever sat
6 on an appeal board but you make the statement again.
7 This is the information I have and they gave me the spe-
8 cific details of that appeal.

9 MR. PIFER: Entirely?

10 THE COMMISSIONER: I quoted to you what
11 they said.

12 MR. PIFER: That is right, but instead of
13 the Chief Medical Officer their reply to you was that I
14 had stated the Chief Claims Officer, and there is where
15 the difference lies. In my letter to you I referred to
16 the trickiness that they resort to and employ and in
17 that --

18 THE COMMISSIONER: Mr. Johnson would you
19 mind getting me that from my file of submissions and
20 my reply?

21 MR. PIFER: I have them in my file, I have
22 a complete file here.

23 THE COMMISSIONER: This is a very serious
24 allegation which you have made, Mr. Pifer, that some
25 outsider sat on an appeal board, and not only an outsider
26 but a representative of the industry in which you worked.
27 On these appeals, did the union represent you on them?

28 MR. PIFER: They claimed that they were
29 blocked, and the laws were such that they could not pro-
30 gress a claim whatever the Compensation Board said was law.



1 and they are more interested -- and this is a hard state
2 ment to make -- but with the things that I have encoun-
3 tered they are not very interested in an individual mem-
4 ber, and I am an individual member. You said it is a
5 serious allegation and that is where I qualified it using
6 the word just earlier, "it appeared" that the payroll of
7 the railway worker is not being taxed and they are in
8 reality dictating the terms to the Compensation Board,
9 and that is why we cannot get anywhere.

10 MR. ESTEY: What union do you belong to?

11 MR. PIFER: The Brotherhood of Railway
12 Trainmen.

13 MR. ESTEY: They wouldn't take up your
14 appeal?

15 MR. PIFER: I went so far as the Vice-
16 President, Gordon Gale, in Winnipeg, to the Legislative
17 Representative, Gordon McGregor and he said he would take
18 it up to the lodge, and I gave my submission to the local
19 legislative representative and he said, "give me the
20 material," and after awhile he brought it back to me and
21 he said he couldn't do anything with it.

22 MR. ESTEY: So you had the appeal before
23 the review board, and then the Board itself. You went
24 right to the top didn't you? You had to do this all by
25 yourself, you never got help from the union?

26 MR. PIFER: That is right. I have discussed
27 this question with individual lawyers who say they act
28 with the Board but not in the courts. Not a case in the
29 courts.

30 THE COMMISSIONER: That is true, there is



1 no appeal to the courts.

2 MR. PIFER: But the Compensation Act states
3 that the Board is appointed by the Lieutenant-Governor,
4 I believe, of the Province, given quasi-judicial powers
5 to administer the Act, but subject to approval; and I
6 contend they have been administering -- misadministering
7 -- the Act, and they have not the approval of the
8 Lieutenant-Governor who, as I understand it, is appointed
9 by the Government of Ontario, and that is why I appealed
10 to Premier Robarts and members of his cabinet. I have
11 been pressing for about three years for the opportunity
12 of getting a judicial decision for my claim, and I feel
13 that the only way the individual will get to the bottom
14 of it is to make a test case out of some individual's
15 claim, or mine.

16 I would like to appear and I have appeared
17 before them, and when they state that the Medical Officer
18 of the Railway from Winnipeg, appeared only as a repre-
19 sentative at their meeting, in their offices here on the
20 19th of November last year, he sat in and they had a
21 court reporter present, and if he reported everything
22 that occurred it will show Dr. Dwyer, from Winnipeg, very
23 active and trying to put me through a sweat session.

24 THE COMMISSIONER: This Dr. Dwyer you refer
25 to, and while you say it is true, they say he didn't. The
26 Regional Chief Claims Officer of the C.N.R. was present.
27 I don't know whether he is that or not, but he was advised
28 on November 19th, 1965, and Dr. Dwyer attended as a
29 representative of the Canadian National Railways, at which
30 hearing he appeared as a representative of the employer



1 who certainly was not a sitting member.

2 MR. PIFER: There is no question that he
3 was.

4 THE COMMISSIONER: The C.N.R., as your
5 employer as I already have explained, has a right to be
6 there when you make a claim and oppose it as they see
7 fit, and that is apparently what they did. He wasn't
8 sitting as a member of the Board, he was sitting to argue
9 against your claim apparently.

10 MR. PIFER: I have asked for a copy of the
11 court reporter's report to be made available to me and
12 to members of the Provincial cabinet, and they will not
13 ignore it. Mr. Legge, who has replaced, I believe, Mr.
14 Sparrow as Chairman of the Board, would not appear at
15 that meeting last November 19th, and I came to Toronto
16 particularly to see him. At a later time I phoned the
17 office and I was referred to an assistant. I phoned the
18 office and after waiting awhile received a notice, I
19 believe from his executive assistant, that he was un-
20 available and they won't meet me face to face, any of
21 them, and why I don't know.

22 THE COMMISSIONER: You appeared on an
23 appeal before the Board. There must be some finality.

24 MR. PIFER: That is what I am looking for,
25 the finality. This has been a very expensive operation
26 for me. I am one who will not surrender to the scheme of
27 divide and conquer they have been playing for years. I
28 am looking for a finality and when it comes, and I think
29 in my letter I stated that I hoped it would reach the
30 stage whereby you would be granted the privilege of



1 making a decision, and whatever your decision is, or
2 whoever has the authority to make a verdict, I will have
3 to accede to it whether I like it or not. That will be
4 finality. At least I would be relieved of the expense.
5 I haven't a cent out of them yet and I am entitled to
6 the maximum compensation.

7 MR. ESTEY: One question you might discuss
8 with the Royal Commission. After you made your claim and
9 were first rejected, do you remember being attended by a
10 Dr. Jamieson?

11 MR. PIFER: No.

12 MR. ESTEY: You can't remember that? Do
13 you remember being asked by the Board to nominate a
14 doctor to examine you as a medical referee?

15 MR. PIFER: To choose one out of three, I
16 remember that.

17 MR. ESTEY: Which one did you choose?

18 MR. PIFER: I wouldn't accept anyone at the
19 start because I contended at the start they were elevat
20 ing a doctor to the role of a judge, and a year later I
21 decided to take a chance on the doctor in the role of the
22 judge.

23 MR. ESTEY: Which one?

24 MR. PIFER: Dr. Greenwood.

25 MR. ESTEY: Do you know what his opinion
26 was?

27 MR. PIFER: No, they wouldn't tell me. They
28 maintained they have privileged evidence which can't be
29 released to anyone concerned in the claim.

30 MR. ESTEY: After Dr. Greenwood examined



1 you, you had your appeal before the Appeal Tribunal in
2 Port Arthur?

3 MR. PIFER: That is right.

4 MR. ESTEY: I take it Dr. Greenwood did not
5 appear at that time?

6 MR. PIFER: No, he did not.

7 MR. ESTEY: And you didn't know what was in
8 the report of Dr. Greenwood at that time?

9 MR. PIFER: I did not know and I wasn't too
10 much concerned what was in his report, but I accepted him
11 as a referee. He was acting in the role of a judge and
12 when I later read -- sir, may I ask this man's position?

13 THE COMMISSIONER: This is Mr. Estey and he
14 is the Commission Counsel and he is here to assist me,
15 and he apparently has more information about the claim
16 than I have, and you should accept the questions from
17 him. You are quite justified in asking what his position
18 is if you did not know.

19 MR. ESTEY: Mr. Pifer, I am just trying to
20 get the history in the order of the events. You are an
21 expert on your history, it is well known to you, but not
22 to us and I want to go through a step at a time. When
23 you nominated Dr. Greenwood --

24 THE COMMISSIONER: If it would make you
25 happier you can sit down, if your breathing is difficult.

26 MR. PIFER: It is easier sitting down, but
27 I would like to show you a copy of a letter from Dr.
28 Greenwood afterwards.

29 MR. ESTEY: You were going to find a letter
30 from Dr. Greenwood?



1 MR. PIFER: That is right, and I have it
2 right here, dated September 13th, 1961. It reads, "I
3 received your letter of the 21st of June and answered it,
4 and I believe it may have gone but there is no carbon
5 copy in my file. My instructions from the Workmen's
6 Compensation Board were that I was to furnish a report
7 your examination to the Board and to none else. Thus
8 my report is the property of the Workmen's Compensation
9 Board. If they wish to supply you with a copy, they will.
10 I am unable to do so."

11 Now Dr. Greenwood was represented to me
12 being an independent doctor, and in his letter it esta-
13 blishes that he is not an independent doctor.

14 THE COMMISSIONER: When you went on to
15 appeal did the Board furnish you -- if they didn't furnish
16 you with his report, did they furnish you with a summary
17 of his report?

18 MR. PIFER: No they wouldn't furnish me
19 with anything.

20 THE COMMISSIONER: You got no summary of
21 the medical evidence at all?

22 MR. PIFER: No, they maintained they had in
23 their file what they called "privileged" evidence that
24 could not be released to anyone, and they have been
25 operating a secret organization for years with everybody
26 else and with me, and I don't have anything directly from
27 Dr. Greenwood.

28 MR. ESTEY: In the next paragraph, you
29 refer to Dr. Cain, who is Dr. Cain?

30 MR. PIFER: Dr. Cain is a doctor out of the



1 Clinic in Fort William.

2 MR. ESTEY: Did you go to see him?

3 MR. PIFER: I went to see him.

4 MR. ESTEY: After your examination with
5 Dr. Greenwood was completed?

6 MR. PIFER: On that Dr. Cain, I have a
7 letter from Dr. Cain similar --

8 MR. ESTEY: You saw Dr. Cain after you saw
9 Dr. Greenwood?

10 MR. PIFER: Oh, yes.

11 MR. ESTEY: And Dr. Cain also said he
12 couldn't give you a report?

13 MR. PIFER: That is right.

14 MR. ESTEY: Since that time you have not
15 received either of those reports?

16 MR. PIFER: No.

17 THE COMMISSIONER: By the way, this was in
18 1959 you appeared before the Board?

19 MR. PIFER: No, not before the Board.

20 THE COMMISSIONER: You say 'originating'.

21 MR. PIFER: That is the day I was placed in
22 the hospital for a torn ligament of the heart.

23 THE COMMISSIONER: Then you went before a
24 review committee, did you, and then appealed right to the
25 Board. Is that what you did?

26 MR. PIFER: Well, I had two more years to
27 work before I reached normal retirement, and I was wanting
28 to carry on in the condition I was in for the two years
29 and earn what I could, as well as increasing my pension.
30 I qualified with the Medical Board in Winnipeg under



1 Dr. Dwyer, although I was always shooed away from him to
2 some of his assistants. He would never see me in Winni-
3 peg and I tried to see him on several occasions, but I
4 tried to go back to work when the Compensation Board
5 notified me, in their first letter, a copy of which was
6 going to my employer, and then the Medical Board of the
7 Railway started to put the pressure on me to apply for
8 retirement.

9 MR. ESTEY: These dates now, speaking for
10 myself, are very confusing. Would you go through the
11 dates now with me and tell me whether I am right?

12 MR. PIFER: All right, sir.

13 MR. ESTEY: Your illness started in August,
14 1959, is that right?

15 MR. PIFER: August 17th.

16 MR. ESTEY: After that your claim was re-
17 jected by the first letter from the Board, and they noti-
18 fied you your claim was not going to be recognized for
19 compensation, do you remember that?

20 MR. PIFER: That is right.

21 MR. ESTEY: After that you went to the
22 Board and the Board and you engaged in some correspondence
23 about the medical referee business, do you remember that?

24 MR. PIFER: I believe I do.

25 MR. ESTEY: Then you took the position that
26 the medical referee was not to make a decision which the
27 Board ought to make, and you objected to this, but ulti-
28 mately agreed on Dr. Greenwood would be the medical ex-
29 pert to examine you?

30 MR. PIFER: To examine me and make a



1 decision.

2 MR. ESTEY: He rendered his verdict and you
3 never got a copy of it?

4 MR. PIFER: No.

5 MR. ESTEY: And after that you appealed
6 your decision to the Appeal Tribunal and that Tribunal
7 sat in Port Arthur, you told me?

8 MR. PIFER: That is right.

9 MR. ESTEY: It sat in April, 1965, would
10 that sound about right?

11 MR. PIFER: That sounds about right. May
12 I clarify that to a degree, and I use the word 'clarify'
13 probably incorrectly, but that Board sitting in Port
14 Arthur was the result of my appeal to the Provincial
15 Government, the Premier in his offices, and their con-
16 tact with Dr. Reynolds, his executive assistant, was in-
17 strumental in having that Board set up.

18 MR. ESTEY: We can go back to that if you
19 like, but I want to follow the dates to figure it out.
20 In the Appeal Tribunal sitting in Port Arthur, did you
21 have anybody with you helping you as counsel or adviser?

22 MR. PIFER: I haven't at any time.

23 MR. ESTEY: Perhaps you will help me, say
24 anything you want, but it would be more helpful just to
25 answer the questions. Did anybody ever say you were
26 entitled to have a workmen's adviser sit with you?

27 MR. PIFER: The Board notified me that I
28 could have counsel and professional assistance. I believe
29 they used the word professional evidence, but all at my
30 expense.



1 MR. ESTEY: Yes?

2 MR. PIFER: And that is the way they wear
3 you out, financially and physically.

4 MR. ESTEY: When you got to the Appeal
5 Tribunal, were you given any copies of the letters and
6 doctor's reports before that Board sat?

7 MR. PIFER: No.

8 MR. ESTEY: When the Board sat, can you
9 remember what happened? How did it go?

10 MR. PIFER: Well, they attempted to make it
11 appear -- pardon me -- they used the Bible to start with
12 to put me under oath, or attempted to -- well they did.
13 I told them I told the truth but to make it appear I was
14 faced with court proceedings, they told me I was under
15 oath in everything I said and that if I did not stick to
16 the truth --

17 MR. ESTEY: You would be in trouble?

18 MR. PIFER: I would be in trouble.

19 MR. ESTEY: Dr. Greenwood did not appear?

20 MR. PIFER: No.

21 MR. ESTEY: Dr. Greenwood did not appear?

22 MR. PIFER: No.

23 MR. ESTEY: Did any doctors give evidence
24 at that hearing?

25 MR. PIFER: No.

26 MR. ESTEY: Did anybody other than you give
27 evidence at that hearing?

28 MR. PIFER: No.

29 MR. ESTEY: Did the Board have somebody
30 that got up and read to the Board the reports which had



1 been in the Board's files prior to that time?

2 MR. PIFER: From doctors?

3 MR. ESTEY: Yes.

4 MR. PIFER: No.

5 MR. ESTEY: Well then, you stood up and
6 told your story starting back with picking^{up} the four hun-
7 dred and seventy-eight pound weight and so on, you told
8 that to the Board?

9 MR. PIFER: In Port Arthur, yes. That
10 weight was established by the investigator from the
11 Claims Department in Winnipeg. In the official report I
12 said three or four hundred pounds. I didn't know what
13 it weighed.

14 MR. ESTEY: Other than yourself, there
15 were no other witnesses in the tribunal?

16 MR. PIFER: That is right.

17 MR. ESTEY: At the end of the hearing did
18 the Board say what the decision was?

19 MR. PIFER: No, not at that time.

20 MR. ESTEY: They said they would let you
21 know?

22 MR. PIFER: That is right.

23 MR. ESTEY: And after they rejected your
24 claim, did you get a notice you could appeal it to the
25 full Board of the Workmen's Compensation in Toronto?

26 MR. PIFER: Not for awhile.

27 MR. ESTEY: Eventually did you get such a
28 notice.

29 MR. PIFER: Yes, I got a notice that the
30 Board would sit and I could appear.



1 MR. ESTEY: You came down to that?

2 MR. PIFER: Yes, sir, right.

3 MR. ESTEY: When you appeared, how many
4 members were present?

5 MR. PIFER: Two.

6 MR. ESTEY: And again I take it you had no
7 advisory counsel or lawyer?

8 MR. PIFER: That is right. May I inter-
9 ject? I was advised that I could have these things but
10 it would be at my expense.

11 MR. ESTEY: That was the same situation as
12 at the Appeal Tribunal?

13 MR. PIFER: That is right.

14 MR. ESTEY: So you came alone. Would you
15 tell us at that time did you give your evidence again
16 starting back at the time of the illness and accident?

17 MR. PIFER: Yes.

18 MR. ESTEY: You told the whole story again?

19 MR. PIFER: That is right.

20 MR. ESTEY: And again you were the only
21 witness that appeared?

22 MR. PIFER: That is right.

23 MR. ESTEY: Did the Board give you a copy
24 of the transcription of the Port Arthur hearing?

25 MR. PIFER: No.

26 MR. ESTEY: Were you given a summary of the
27 doctor's evidence, or what was in the file on medical
28 evidence?

29 MR. PIFER: No.

30 MR. ESTEY: Were you told you could have



1 such a summary?

2 MR. PIFER: I was told I couldn't have
3 one, that it was privileged evidence, and that couldn't
4 go out.

5 MR. ESTEY: You read those letters to us,
6 I wonder about a summary?

7 MR. PIFER: No, I haven't had a summary.

8 MR. ESTEY: They didn't say you could or
9 could not, but you haven't been given one?

10 MR. PIFER: That is right. May I inter-
11 ject? This is a report, this answers your question a
12 little better. I wrote and asked for a copy of Dr.
13 Greenwood's report and they wouldn't give it to me.

14 THE COMMISSIONER: That wasn't his ques-
15 tion. The Board has consistently refused to produce the
16 report and that is one of the things we have to consider
17 here, which you are raising. Now the Board has told us
18 they produce for appeals summaries of the evidence, and
19 they give appellants a full summary of the evidence with-
20 out disclosing individual statements of doctors who ex-
21 amine the patients.

22 MR. PIFER: That is not correct.

23 THE COMMISSIONER: You never received one?

24 MR. PIFER: I never received one.

25 MR. ESTEY: At the hearing before the
26 Board, was the Canadian National Railways present through
27 some representative, Dr. Dwyer, was he there?

28 MR. PIFER: In Port Arthur?

29 MR. ESTEY: All right, in Port Arthur?

30 MR. PIFER: Yes, he was there.



1 MR. ESTEY: Did he have much to say at
2 that time?

3 MR. PIFER: Nothing.

4 MR. ESTEY: In Toronto, did he appear be-
5 fore the Board?

6 MR. PIFER: Yes, that is where he became
7 active, here in Toronto.

8 MR. ESTEY: He had something to say here
9 in Toronto?

10 MR. PIFER: Yes, he did.

11 MR. ESTEY: What generally did he have to
12 say, do you remember?

13 MR. PIFER: He was attempting to enter
14 evidence which was not correct.

15 MR. ESTEY: Did the Board let him?

16 MR. PIFER: No, I stopped him. They would
17 let him go alright. I stopped him and soon as I object-
18 ed and ducked into my files they dropped the question
19 right away.

20 MR. ESTEY: We are interested in this one
21 part of it, as to procedure. Perhaps you can help us.
22 When Dr. Dwyer appeared at the Board here in Toronto,
23 was he a witness or a representative of the Railway?

24 MR. PIFER: I didn't know he was going to
25 be there until I got here. I was surprised to see him
26 in Port Arthur in the first place. He was always too
27 busy to see me in his own offices in Winnipeg but came
28 to Port Arthur in a special car and he just sat there.
29 It is the first time I ever seen him.

30 MR. ESTEY: Down in Toronto, tell us about



1 that.

2 MR. PIFER: In Toronto he came in while I
3 was in the waiting room. He came to the waiting room
4 where I had taken off my coat and he entered inside, and
5 after awhile I was entered and he was sitting at the
6 table along with these other men, and again they started
7 in by using the Bible.

8 MR. ESTEY: Did they use the Bible for
9 the doctor as well as you?

10 MR. PIFER: No, just for me because they
11 had me all by themselves.

12 MR. ESTEY: You were a better prospect?

13 MR. PIFER: Oh yes, I am the dumb one of
14 the crowd.

15 MR. ESTEY: Let us get back to the pro-
16 cedure. When you got in the room the two Board members
17 sat at one end, and you sat at the other?

18 MR. PIFER: I sat, shall we say, I sat
19 facing them. Dr. Dwyer sat, I guess parallel to me, a
20 little further to the right facing them as well, but he
21 had his evidence there and attempted to show them some
22 of the things that occurred in Winnipeg at their Board.

23 MR. ESTEY: What do you mean, Winnipeg at
24 their Board?

25 MR. PIFER: Well, I have a file a mile
26 thick at the Canadian National Medical Board.

27 MR. ESTEY: Did you go to Winnipeg to be
28 examined by that Board?

29 MR. PIFER: I had to. We are subject to
30 periodical medical examinations by the Railway, and the



1 Medical Board, and if there is something that displeases
2 them, they will find a pimple on you some place or
3 another, and reject you for further employment.

4 MR. ESTEY: But this was after your heart
5 attack that you went to Winnipeg?

6 MR. PIFER: It has been called a heart
7 attack.

8 MR. ESTEY: I am sorry I used the term.
9 After the 19th of August 1959, did you go to the Medical
10 Board in Winnipeg?

11 MR. PIFER: After I was rejected?

12 MR. ESTEY: By the Workmen's Compensation
13 Board?

14 MR. PIFER: Yes, and appeared before one
15 of their doctors they appointed in Port Arthur. And may
16 I add to that after he examined me he said, "you appear
17 to be in fairly good physical shape, what is this all
18 about?"

19 MR. ESTEY: The Winnipeg doctor?

20 MR. PIFER: The Port Arthur doctor, Dr.
21 Ritchies.

22 MR. ESTEY: This was after the claim had
23 arisen?

24 MR. PIFER: That is right.

25 MR. ESTEY: Why did they take you to
26 Winnipeg to be examined?

27 MR. PIFER: I went to Winnipeg and asked
28 for an examination right in their office when I wasn't
29 acceptable to return to work. I got it and qualified to
30 return to work with that examination.



1 MR. ESTEY: And did you return to work?

2 MR. PIFER: No. They wouldn't let me
3 after the Compensation Board turned my claim down.

4 MR. ESTEY: We have this situation. The
5 Canadian National Regional Board said you were fit to
6 return to work, but after that report and before you
7 returned to work the Compensation Board denied your
8 claim?

9 MR. PIFER: Will you repeat that?

10 MR. ESTEY: Your claim arose in August,
11 1959, and after that you were examined by Dr. Ritchies
12 at the Lakehead, and then examined in Winnipeg by the
13 Regional Board of the Canadian National Railways, with
14 a view to saying whether you were fit to go back to work,
15 and that Board decided you were fit to go back to work
16 but before the Canadian National Railways put you back
17 on the job, the Compensation Board turned down your claim
18 for compensation. Is that right?

19 MR. PIFER: I just don't quite get that.
20 I don't want to make a statement that is not correct.
21 The Compensation Board turned it down before that.

22 THE COMMISSIONER: Let us stop now. I am
23 confused. Did somebody tell you you couldn't go back
24 to work?

25 MR. PIFER: They extended the sick leave
26 to six months. The doctor who placed me in the hospital
27 for torn ligament of the heart okayed me to return to
28 work after two months for doing curtailed work.

29 MR. ESTEY: Did you return to work?

30 MR. PIFER: No.



1 MR. ESTEY: Why didn't you?

2 MR. PIFER: I was notified I had to appear
3 before Dr. Ritchies, representing the Railway in Port
4 Arthur, and he made the statement that I would seem to
5 be in pretty good shape and he said, "what is this all
6 about?" I told him what I was hospitalized for and he
7 said he would have to send his report in to Winnipeg. He
8 wanted a report from the doctor who attended me in the
9 hospital before he went back, and when I still didn't
10 get anywhere, I went back to him to find out if he had
11 been a party to having the Compensation Board reject me.

12 MR. ESTEY: Did you try to go back to work?

13 MR. PIFER: Yes. I had to leave home to
14 return to work and I was in the act of getting the best
15 job I could get with my seniority.

16 THE COMMISSIONER: Could you return to
17 work with the Canadian National Railway?

18 MR. PIFER: In baggage service on other
19 trains where there were two brakemen employed.

20 THE COMMISSIONER: They were prepared to
21 take you back, but not in the same place as you were
22 before?

23 MR. PIFER: That is right.

24 THE COMMISSIONER: What did you do before?

25 MR. PIFER: I was a combination baggage
26 man, express messenger and mail clerk, handling a job
27 connected with three men half way between there and
28 Winnipeg. It had formerly been two men and in the days
29 of the depression they made it a one man job, and when
30 business got stronger again they had me on there and



1 there was every effort made to have more help on that
2 train. The Express Department wouldn't stand for it. I
3 got twenty dollars and sixty-seven cents for express
4 messenger work, in addition to baggageman's pay and
5 twelve dollars a month for handling the Royal Mail. I
6 worked from there to Fort Frances and at Fort Frances
7 they had three different cars, three different men, a
8 baggage car, express car and a mail car. I grant you it
9 was a little heavier between there and Winnipeg, but I
10 had reports to prepare for all of them and I was a busy
11 little boy.

12 MR. ESTEY: I want to finish off with what
13 happened down in Toronto. You got as far as the waiting
14 room. The doctor went in and you went in afterwards.
15 How long afterwards?

16 MR. PIFER: Roughly ten or fifteen minutes.

17 MR. ESTEY: I see. When you got in there
18 they were waiting to start your case?

19 MR. PIFER: That is right.

20 MR. ESTEY: How long did your case take?

21 MR. PIFER: Approximately one hour.

22 MR. ESTEY: And during that time you again
23 were the only witness?

24 MR. PIFER: That is right.

25 MR. ESTEY: Did the Board have a lawyer
26 there asking you questions?

27 MR. PIFER: No they did not. May I say
28 at their appeal you have raised an opportunity for me to
29 make this statement. At the Appeal Tribunal in Port
30 Arthur when I contested and questioned some of their



1 statements and asked questions of my own, the reply I
2 received was they weren't there to answer questions,
3 they were there to ask them.

4 MR. ESTEY: Did you notice in that appeal
5 here, or the Appeal Tribunal, did anybody ever dispute
6 the fact you picked up the four hundred and seventy-
7 eight pound weight?

8 MR. PIFER: No, it was never disputed.

9 MR. ESTEY: Was it ever disputed that you
10 did that as part of your job?

11 MR. PIFER: No.

12 MR. ESTEY: I take it you did it as part
13 of your work?

14 MR. PIFER: Oh, yes. In the Express De-
15 partment.

16 MR. ESTEY: The medical evidence was not
17 read out loud in Toronto at the Board Hearing?

18 MR. PIFER: No.

19 MR. ESTEY: Do you know if there was a
20 pause in the proceedings while the Board read the medical
21 evidence out of any files?

22 MR. PIFER: Not to my recollection.

23 MR. ESTEY: Was the whole of the one hour
24 taken by you explaining your position?

25 MR. PIFER: I would say yes.

26 MR. ESTEY: And then you got into a dis-
27 cussion with Dr. Dwyer and he wanted to say something,
28 and eventually you arranged to have your objection sus-
29 tained, and he was stopped?

30 MR. PIFER: He just stopped because I had



1 him stopped. I had my records to establish what he said
2 wasn't correct.

3 MR. ESTEY: So the Board heard the rest of
4 your story and they told you they would give you their
5 decision shortly, is that right?

6 MR. PIFER: They said it would be at least
7 a week before rendering a decision.

8 MR. ESTEY: Eventually you did hear from
9 them?

10 MR. PIFER: That is right.

11 MR. ESTEY: By letter?

12 MR. PIFER: Yes.

13 THE COMMISSIONER: And the letter said
14 your claim was rejected and no reasons were given?

15 MR. PIFER: I would say no reasons. I
16 have their letter in the file some place.

17 THE COMMISSIONER: Could you find that
18 without too much trouble?

19 MR. PIFER: Here is what I received from
20 the Board.

21 MR. ESTEY: You have given us, Mr. Pifer,
22 a letter to you in Fort William, from the Board. Or at
23 least on their letterhead, signed by R.E. Simpson. It
24 reads:

25 "Following your hearing before the Board
26 on November 19th, 1965, enclosed is a copy
27 of the Board's decision."

28 Attached to that is a document headed
29 "Workmen's Compensation Board" which stated you appeared
30 on your own behalf and Dr. Dwyer, Medical Officer, for



1 the Canadian National Railways who appeared for the
2 Railway, and under the heading "Decision" it goes on to
3 state it is an appeal from the decision of the Appeal
4 Tribunal dated April 21st, 1965, in the case of Mr.
5 Conwell Pifer whose claim is for compensation and medical
6 aid expenses, as a result of a cardiac attack when in the
7 employ of Canadian National Railways. It goes on to
8 state "The Board has carefully reviewed the evidence of
9 the Appeal Tribunal here and has been assisted by Mr.
10 Pifer's evidence before the Board. The Board has found
11 at the time of Mr. Pifer's disability, the cardiac dis-
12 ability is not compensable." This is dated December
13 15th, 1965 and signed E.C. Steele, M.D., and J.A. Colley,
14 Vice-President.

15 I take it the third member, Mr. Legge, was
16 not present?

17 MR. PIFER: That is right. And may I add
18 to that, later on I phoned his office and he wouldn't
19 answer his phone.

20 MR. ESTEY: Were you given any reasons at
21 the Appeal Tribunal level at Port Arthur as to why your
22 claim was denied?

23 MR. PIFER: Other than they persistently
24 avoided the diagnosis that I was hospitalized under a
25 torn ligament of the heart. I have asked them to tell
26 me if it wasn't a torn ligament what was it, and they
27 persistently evade that question and they have called it
28 a coronary, and I believe they furnished Mr. Justice
29 McGillivray -- I have it in the other file -- a copy of
30 their letter to me stating that the Appeal Tribunal in



1 Port Arthur accepted the diagnosis on August 17th, 1959,
2 as coronary thrombosis, and there never was any throm-
3 bosis. Not yet anyway.

4 MR. ESTEY: Have you a letter to that
5 effect? I just wondered if you had that in a letter?

6 MR. PIFER: I received that letter from
7 Mr. Justice McGillivray, a copy of it.

8 THE COMMISSIONER: The only thing I sent
9 you is the extract I referred to you was it not? I
10 didn't send you a copy of a letter. If so, it went out
11 by mistake.

12 MR. PIFER: It could have been a mistake.

13 THE COMMISSIONER: I returned to you the
14 material you sent to me.

15 MR. PIFER: You returned this to me, but
16 I have that original letter. That was enclosing your
17 letter to me.

18 THE COMMISSIONER: This is a letter address-
19 sed to you by the Secretary of the Field Tribunal?

20 MR. PIFER: That is right. I have the
21 original of that letter, did they furnish you a copy?

22 MR. ESTEY: Mr. Pifer, could I file as an
23 exhibit a letter you gave me a moment ago from the Board?

24 MR. PIFER: I wish you would take them all
25 and file them all as exhibits.

26 MR. ESTEY: If we may have it, could Mr.
27 Johnson give that a file number?

28 MR. JOHNSON: It will be Exhibit No. 44.

29 EXHIBIT "44": Letter dated May 7th, 1965,
30 filed.



1 MR. ESTEY: This is a report and is dated
2 May 7th. Mr. Pifer, you gave us a letter dated the 7th
3 May, 1965, directed to you by the Secretary of the
4 Field Tribunal, in which they say in part you had pain
5 in your left arm prior to August 17th, 1959. Did you
6 give the Board that information?

7 MR. PIFER: Yes, but I didn't until later
8 on. I had been working and treated it as a strain to
9 the left shoulder and shoulder blade, and I never knew
10 the heart was involved. I was favouring the left arm
11 and taking the bulk of the work on my right arm and
12 shouldn't have been doing it. It wasn't until I gave
13 that heavy lift in August, 1959 --

14 MR. ESTEY: One other question. When you
15 went to the doctor the first doctor, you went to see
16 who, Dr. Ritchies?

17 MR. PIFER: No. The first doctor I went
18 to was Dr. Craig, in Fort William.

19 MR. ESTEY: The C.N.R. doctor?

20 MR. PIFER: No, a private doctor. My own
21 doctor. He referred me, he had only opened a new build-
22 ing and taken a partner in, and he recommended Dr.
23 Nickerson very highly, as being a specialist in internal
24 medicine, and asking me to accept him. He was a spe-
25 cialist in surgery himself.

26 MR. ESTEY: You went to Nickerson?

27 MR. PIFER: He just transferred me to him
28 in that office. His partner.

29 MR. ESTEY: What doctor did you go to next?

30 MR. PIFER: The next was Dr. Ritchies,



1 under instructions from the C.N.R.

2 MR. ESTEY: That was to see if you were
3 fit to go back to work?

4 MR. PIFER: That is right.

5 MR. ESTEY: After that you saw Dr. Green-
6 wood?

7 MR. PIFER: After that I went directly to
8 the Medical Clinic in Winnipeg.

9 MR. ESTEY: For the C.N.R. again?

10 MR. PIFER: The C.N.R. again.

11 MR. ESTEY: What doctor after that?

12 MR. PIFER: Dr. Greenwood.

13 MR. ESTEY: Then you went to Dr. Greenwood.
14 Do you remember whether you signed any statement that
15 you agreed that Dr. Greenwood would be a medical referee
16 and his decision would be final and binding? Do you re-
17 member that?

18 MR. PIFER: I remember -- in fact you are
19 now raising a question that I can only answer by refer-
20 ring you to my letter and the conditions under which I
21 accepted Dr. Greenwood. I wouldn't accept him in the
22 role of a judge in the first place, but I finally agreed
23 as I wanted to finalize the claim some way or another.
24 Then I had a submission to Dr. Greenwood -- that is it
25 presented the case in its entirety and I think it was
26 enclosed in material I left before this sitting started.

27 MR. ESTEY: Yes, I have looked at that.
28 How did you happen to select Dr. Greenwood? Was he
29 named to you in a list of three and you picked one?

30 MR. PIFER: That is right. He headed the



1 list and they were all the same to me.

2 MR. ESTEY: Where was he?

3 MR. PIFER: In Toronto.

4 MR. ESTEY: And you came to Toronto to be
5 examined by him?

6 MR. PIFER: That is right. The Board
7 agreed to pay my expenses and when I got home I sub-
8 mitted a bill. I stayed in Toronto two nights and, by
9 the way, at the King Edward Hotel, and paid my own
10 sleeper back. I have a system pass on the railroad and
11 I am not considering that in. I thought I kept my ex-
12 pense account to a minimum and I sent a bill of forty-
13 one dollars and thirty-five cents and some time later I
14 got a letter. There was a check for twenty-seven dollars
15 and forty cents enclosed. Nothing, no explanation at
16 all and I wouldn't cash it, and I eventually returned it
17 to them. I haven't had a cent from them. Right now it
18 is costing me ten dollars a night. They wear you out
19 financially.

20 MR. ESTEY: What about the medical bills,
21 were they paid by the Board?

22 MR. PIFER: Not by the Board. I was a
23 member of the medical insurance group of the trainmen's
24 organization, as well as the hospital, and I still have
25 that carried through the union.

26 MR. ESTEY: Then they paid the medical
27 expenses?

28 MR. PIFER: They paid the medical expenses.
29 May I just finish answering that former question. Some
30 little return I had to make afterwards I paid individually,



1 such as blood tests and one thing or another, and once
2 they get the type, this welfare organization, described
3 I believe it was by the manufacturer's association as a
4 welfare racket, and I know that some of these doctors are
5 playing it for a racket whenever they get a chance.

6 MR. ESTEY: I don't want to tire you out.
7 Just two more questions. Did you sign any kind of a
8 statement saying you agreed that Dr. Greenwood's report
9 would be final and binding?

10 MR. PIFER: A verdict, not his opinion,
11 and I have my letter stating that an opinion and a ver-
12 dict are two different things, as far as I was concerned.

13 MR. ESTEY: Am I right in assuming since
14 August 17th, 1959, you have not worked for the C.N.R.?

15 MR. PIFER: That is right. I couldn't
16 qualify to work any place.

17 MR. ESTEY: And you didn't, in fact, go to
18 work for the C.N.R. after that?

19 MR. PIFER: Oh, no.

20 THE COMMISSIONER: I thought they asked you
21 to go back to a junior job and you wouldn't take it?

22 MR. PIFER: Not a junior job. A little
23 less strenuous. They permitted me to return to work and I
24 could exercise my seniority as a baggage man any place
25 in the promotion district, which was between Port Arthur
26 and Vancouver, if I had to.

27 THE COMMISSIONER: Did you return then
28 when they offered this?

29 MR. PIFER: I was in the act of returning
30 and in the crew clerk's office in Winnipeg, and he was



1 giving the data from Edmonton or Vancouver where my
2 seniority would entitle me to work. I could work out of
3 Winnipeg or Edmonton but I preferred to go to Vancouver
4 if I had to leave home, on account of the weather.

5 THE COMMISSIONER: What was the result of
6 it?

7 MR. PIFER: Then they extended the sick
8 leave and wrote to Port Arthur to convince me that it
9 was in the best interests of all concerned for me to
10 apply for pension.

11 THE COMMISSIONER: They originally sug-
12 gested that you go back to this, but instead of going
13 back when you were prepared to go back, they extended
14 sick leave and suggested you go on pension?

15 MR. PIFER: They extended sick leave at
16 six months, but prior to that they asked me to apply for
17 a disability pension.

18 MR. ESTEY: When you say "they", you mean
19 the Railway asked you to apply?

20 MR. PIFER: The Medical Board, not the
21 Railway. The Railway Medical Board --

22 MR. ESTEY: It wasn't a disability pension,
23 it was a pension you were due to get in two years time?

24 MR. PIFER: That is right.

25 THE COMMISSIONER: Except it would be at
26 a lower rate because it was two years ahead, is that
27 right?

28 MR. PIFER: They didn't deduct from my
29 allowable service. I was thirty-six years in the train
30 service, although I only had twenty years and ten months



1 allowable service of that. If I had of applied for a
2 pension, they would have deducted two years from that,
3 which wouldn't make my allowable because you have to
4 have at least twenty years.

5 THE COMMISSIONER: You didn't go on regu-
6 lar pension, you went on disability pension, is that
7 what you say?

8 MR. PIFER. That is right.

9 THE COMMISSIONER: And it is less than the
10 regular pension, is that right?

11 MR. PIFER: Yes, because I would have had
12 two more years and a different rate of earnings to base
13 my pension on.

14 MR. ESTEY: You are on that pension now?

15 MR. PIFER: Oh yes, I have been for awhile.
16 I asked them for it when I decided that they were trying
17 to wear me out one way or another, so I better keep a
18 little something; so I applied for it and tried to get
19 it retroactive to when I last worked. They wouldn't do
20 it. They provided it to the first December. I lost a
21 couple of months there.

22 THE COMMISSIONER: When you were on sick
23 leave, didn't you get full pay?

24 MR. PIFER: No. I was supposed to get it
25 under compensation but I haven't got anything. It hasn't
26 taken effect yet, but there was in progress, in a state
27 of progress at that time a welfare plan, whereby you
28 get it, but it hadn't been put into effect yet, and I
29 didn't get that. I didn't get anything but I did get my
30 pension, and the gross pension is one hundred and three



1 dollars and four cents a month, and because I have been
2 successful in having it carried through the pension
3 department, I have deductions from the source for hos-
4 pital and Blue Cross. These are deducted from the source
5 and I get a cheque each month for ninety-three dollars
6 and ninety cents. That is what I am living on.

7 MR. ESTEY: You would have retired on
8 pension in 1961?

9 MR. PIFER: That is right.

10 MR. ESTEY: How much would your pension
11 have been?

12 MR. PIFER: Roughly twenty-five dollars
13 more, based on my last five years earnings, and I had
14 that plan which is known as the 1959 pension plan, which
15 had just come into effect just before I was disabled.
16 I had subscribed to that before the injury occurred and
17 if I could get it I would have my best five years to
18 use as an average to base my pension on. I would have
19 got twenty-two years and ten months rating on that, plus
20 I could have increased my average around one thousand
21 dollars. While my best five years were the last years
22 I worked around forty-four hundred dollars, but I could
23 have brought it up close to six thousand dollars for the
24 last three years and added to it and earned all I could.

25 MR. ESTEY: One more question. Would you
26 explain why the Brotherhood did not appear for you on
27 the Appeal Tribunal?

28 MR. PIFER: I didn't ask them to.

29 MR. ESTEY: Did you ask them to, the
30 Brotherhood, to appear for you before the Board?



1 MR. PIFER: No. Not the Board Hearing.
2 I am better off without them. They would hinder.

3 MR. ESTEY: When did they appear for you,
4 if they did at all?

5 MR. PIFER: May I say at this stage I had
6 better support from management, top men within the ranks
7 of management, the General Manager in Winnipeg and the
8 Superintendent, and they interceded for me and they
9 couldn't do anything with their own medical board. They
10 are handicapped themselves.

11 MR. ESTEY: When did the Brotherhood ap-
12 pear for you if they ever did in this matter?

13 MR. PIFER: They didn't appear. I asked
14 them to appear but they wouldn't do it.

15 MR. ESTEY: When was that? At what stage
16 was that?

17 MR. PIFER: That was before.

18 MR. ESTEY: Away back when the referee
19 was being appointed?

20 MR. PIFER: I think it was after that.

21 MR. ESTEY: After Dr. Greenwood's examin-
22 ation?

23 MR. PIFER: I believe it was.

24 MR. ESTEY: That is when you wanted them
25 to reopen the thing and get the appeal going?

26 MR. PIFER: That is right.

27 MR. ESTEY: They wouldn't do that. Did
28 they give you any reasons?

29 MR. PIFER: They claimed they couldn't.
30 I went to the Vice-President, Gordon Gale, in Winnipeg,



1 and he referred me to the Dominion Legislature, Gordon
2 McGregor. I went to Ottawa to see him and he said, "Go
3 back home and take it up through your own lodge." My
4 own lodge local legislative representative, Fred Culliton,
5 who is also the Provincial Legislative Representative,
6 brought my material back and said, "I couldn't do any-
7 thing with this."

8 MR. ESTEY: He didn't give you any explan-
9 ation as to why he couldn't?

10 MR. PIFER: Fred Culliton. No he didn't
11 give me any explanation. I know he doesn't have the
12 ability in the first place.

13 MR. ESTEY: Mr. Pifer, you have been very
14 helpful to us. I have no further questions to ask you.
15 If you have anything to add which I may have interrupted
16 you in saying, subject to the Commissioner's approval
17 you might say it now.

18 MR. PIFER: I would like to state I have been
19 treated very courteously at this hearing today. You have
20 given me every advantage. I would like to say that the
21 Compensation Board, who have been described as a secret
22 or a government tax supported welfare agency -

23 THE COMMISSIONER: They are not, because
24 the industry supports them. The government does not.

25 MR. PIFER: I think they are. I think in
26 my letter to you I described it as a tax supported racket.

27 THE COMMISSIONER: It is not supported by
28 taxes, that is the trouble.

29 MR. PIFER: That is where the trouble lies.

30 THE COMMISSIONER: I didn't say it is the



1 trouble. It is a misconception in your mind. It is
2 entirely supported by industry.

3 MR. PIFER: I understand that, but the
4 Canadian National Medical Board I have had to let ex-
5 amine me. The Canadian National Medical Board as an
6 independent organization, and then in turn met them
7 again as an integral part of the Compensation Board.
8 The same Board.

9 THE COMMISSIONER: Again I tried to explain
10 to you, I think you are mistaken about that. I know you
11 are mistaken about that.

12 MR. PIFER: I am not in the position to
13 argue the point with you or Mr. Estey, and I don't have
14 the privilege even though I have the learning and I
15 realize that with a Grade XIII education which I had
16 fifty-seven years ago, I am confronted with a group of
17 learned persons and I am not going to argue a point of
18 law or attempt to.

19 THE COMMISSIONER: I know you must feel
20 you are at a disadvantage, but I think you are doing
21 very well. But on this particular thing you now raise
22 I must accept the statement given me by the Workmen's
23 Compensation Board, that this Dr. Dwyer did not sit on
24 the Appeal Tribunal; and I do that for more reasons than
25 one because it was incredible that he should. Nobody is
26 entitled to deal with Workmen Compensation matters ex-
27 cept people who work for the Board. This man doesn't,
28 and at a later time he appeared and, it was certainly
29 clear, as the industrial representative. I would have to
30 accept the statement of the Board on that matter and I



1 feel you are under a misapprehension at what occurred at
2 the Appeal Tribunal.

3 MR. PIFER: May I reply? You used the
4 word "incredible" that Dr. Dwyer would sit as a member
5 of the Compensation Board. It was incredible to me at
6 the time that it would occur, and I believe in my letter
7 to you that I suggested and asked you to get a copy of
8 the official court reporter's report. Have you seen
9 that?

10 THE COMMISSIONER: No, I have not seen it.

11 MR. PIFER: I have asked the Compensation
12 Board to release it and they will not do it, and I am
13 asking you to get it and you will change your opinion
14 after reading that, if it is complete. I would like to
15 see it myself and I would know if any part was deleted.
16 Dr. Dwyer was active as^a/sitting member of that panel and
17 I make the statement in my opinion the Canadian National
18 Railroad Medical Board -- my chief difficulty is that
19 the payroll -- as a member of a group whose payroll
20 isn't taxed and that is just why my main difficulty is
21 two fold.

22 THE COMMISSIONER: I may say, Mr. Pifer,
23 that the representative of the Railway, the Canadian
24 National Railway, appeared here and his complaint was
25 Dr. Dwyer and others had to appear for them before the
26 Appeal Tribunal. The representative felt they shouldn't
27 have to and the Appeal Tribunal should subpoena this
28 evidence themselves. He felt it shouldn't be up to in-
29 dustry to go in there and oppose a case and get bad
30 employer-employee relations because of it. He is com-



1 plaining about the thing you are saying.

2 MR. PIFER: I have discussed this with
3 top officials and may I also state that the Medical
4 Board, who have made representations and don't want many
5 restrictions -- right in Fort William there is a case
6 there now in a pool room. He hops around a table and
7 plays pool all afternoon and once he gets ready to go
8 home he gets his crutches and hobbles on them home again,
9 and that is because his doctor says he is not ready for
10 work and he gets a day's fee out of it. We have these
11 things going on and everybody is playing it for a rac-
12 ket. I am going to ask you and I believe you have the
13 authority to get it if you so desire, you would have
14 access to their files, and access to get that court
15 reporter's report and then form your opinion as to whe-
16 ther Dr. Dwyer sat in or not. They wouldn't give me a
17 copy of the report.

18 MR. ESTEY: When did you ask for that?

19 MR. PIFER: This spring.

20 MR. ESTEY: In writing by any chance?

21 MR. PIFER: Yes, writing and telephone.
22 I have my letter I think.

23 THE COMMISSIONER: This was after your
24 appeal to the Board, or before?

25 MR. PIFER: Yes.

26 THE COMMISSIONER: Before your appeal to
27 the Board, did you ask for your evidence then? The
28 transcription of the evidence before the Appeal Tribunal?

29 MR. PIFER: No, I didn't because replies
30 I had received from the letters have said it was not



1 secret but used the words "privileged" evidence which
2 could not be disclosed and there was no use asking for
3 it.

4 THE COMMISSIONER: Was the only evidence
5 before the Board that was oral, your own?

6 MR. ESTEY: Did you get a reply from the
7 Board when you asked for a transcript of the Board's
8 Hearing?

9 MR. PIFER: Will you read this sir. That
10 is a copy of my letter to the Board.

11 MR. ESTEY: Did you get a reply?

12 MR. PIFER: Some assistant to the assist-
13 ant would reply.

14 MR. ESTEY: Could you find that for me
15 do you suppose?

16 MR. PIFER: A reply to that letter is it?

17 MR. ESTEY: Yes.

18 MR. PIFER: What date is that letter?

19 MR. ESTEY: December 13th, 1965. There is
20 some discussion in your letter that you could get a
21 copy of the Appeal Tribunal transcript, and apparently
22 it was available at the Board's Hearing.

23 MR. PIFER: No.

24 MR. ESTEY: Your letter says the Port
25 Arthur transcript was available at the Board Hearing.

26 MR. PIFER: The Board saw fit to order one,
27 which is the Port Arthur transcript. There was a court
28 reporter present at the meeting in Toronto on November
29 19th and I wrote, "please furnish Mr. Wardrope and my-
30 self with a copy for our records."



1 MR. ESTEY: You are asking them for a
2 transcript?

3 MR. PIFER: I have a copy of a letter from
4 Mr. Legge, dated October 6th, 1959, to the Honourable
5 G.C. Wardrope, which states I can order a transcript of
6 the record from an official court reporter in Port
7 Arthur, but I must bear the expense. That is another
8 way of wearing a person out financially.

9 MR. ESTEY: That date must be wrong be-
10 cause the hearing wasn't heard.

11 MR. PIFER: That would be 1965.

12 MR. ESTEY: In any event they said you
13 could have a transcript if you paid for it of the Port
14 Arthur hearing?

15 MR. PIFER: I could order a reporter to be
16 present if I paid for him, and I also have a letter
17 from the Board here and they named a court reporter from
18 Port Arthur. I would have to bear the expense.

19 THE COMMISSIONER: We have a court re-
20 porter here and there was a court reporter on the
21 Appeal Tribunal. You don't have to pay for the court
22 reporter but you might have been asked to pay for a
23 transcript of the evidence, if you wanted to use it be-
24 fore the Field Tribunal, but I suppose if you were the
25 only one to give oral evidence there was no point in
26 getting a transcript before the Board.

27 MR. PIFER: Well, how long can a person
28 bear expense when there is no income? That is the
29 question that I have been confronted with. They have
30 been playing with tax money and I have --



1 MR. ESTEY: What you are saying is that
2 at the Board meeting here in Toronto, Dr. Dwyer had
3 something to say and the transcript would prove it.

4 MR. PIFER: The court reporter's report
5 would prove it and might I add this might be revealing
6 testimony, but after the meeting was over I went out in
7 the waiting room and sat down for awhile because I was
8 tired. The court reporter came out afterwards and un-
9 solicited he said, "You made a good submission today."
10 I don't know what kind of a submission I made here today
11 but you will be the judge of that. I don't know.

12 MR. ESTEY: Mr. Pifer, we have your sub-
13 mission and it is kind of you to come down here and
14 tell us your story.

15 MR. PIFER: I did it -- I am attempting
16 to get what I am entitled to -- my claim is thirty-five
17 thousand dollars in arrears right now because I am en-
18 titled to the maximum compensation based on my earnings
19 of five thousand dollars a year. I will have to tighten
20 my belt up when I go home again after this trip.

21 MR. ESTEY: Thank you very much, Mr.
22 Pifer.

23 THE COMMISSIONER: Mr. Pifer, if you speak
24 to Mr. Estey he will arrange to pay your hotel accommo-
25 dations while you were here. We will now recess for
26 ten minutes.

27
28
29 The hearing recessed for
30 ten minutes.



1 MR. ESTEY: We have Mr. Kerr of the
2 Workmen's Compensation Board.

3 THE COMMISSIONER: I thought there was
4 another gentleman.

5 MR. ESTEY: That is a representative of
6 International Nickel.

7 THE COMMISSIONER: No other individuals
8 we know about?

9 MR. JOHNSON: I understood Mr. Morton was
10 coming. He is the deaf man.

11 MR. ESTEY: I have received no other
12 notices of any kind, Mr. Commissioner, that any other
13 individuals or anybody else wishes to appear this morn-
14 ing and, therefore, we have two or three items of busi-
15 ness left over from earlier proceedings. Mr. Kerr of
16 the Board is here to deal with two of the items. Mr.
17 Kerr, you might wish to come forward and, first of all,
18 a policy order was issued by the Board in connection
19 with the aggravation of pre-existing injuries, as dis-
20 cussed with Dr. Kavanagh.

21 MR. KERR: Mr. Commissioner, when Dr.
22 Kavanagh was giving evidence in aggravation of pre-
23 existing conditions, he mentioned prior to 1964 the
24 workmen received half of his full pension. An example
25 used was a man who had a pre-existing diabetic condition,
26 and lost a portion of his leg, would receive half his
27 normal pension. Commencing in December, 1964, the policy
28 was changed whereby a man under these circumstances
29 would receive full pension, and not just half pension.
30 We were requested to file a copy of the Board's order



authorizing that change, which I am so doing. The order is dated December 2nd, 1964.

MR. ESTEY: Do you have any extra copies?

MR. KERR: I am sorry, I just have the one.

MR. JOHNSON: This will be Exhibit "45".

EXHIBIT "45": Copy of Board's Order dated December 2nd, 1964, filed.

MR. KERR: May I go on to the next point?

MR. ESTEY: Yes.

MR. KERR: The Motor Vehicle Manufacturers' Brief suggested that the Board should take the same care in adjudicating small claims as we do in adjudicating more expensive claims. By small claims they meant claims for compensation when the lost time is a relatively short period of time, as compared with a lost time case involving perhaps a more lengthy period of time.

MR. ESTEY: Claims for which the lost time claim is relatively short?

MR. KERR: As opposed to lost time claims where there is a long period of disability.

In handling these short item claims we use the same approach and same technicalities as we do in the more extensive type of claims, where there is a lengthy period of lost time. We must make full inquiry as to whether the man is a workman under the Act. We must establish the accident occurred during the course of employment, and arose out of employment, and to do this we use the same approach as in the more extensive type of claim. We obtain the information in the first instance by correspondence and forms. If an investigation of a short lost



1 time disability is necessary, we will send a field claims
2 investigator to the locality to get the details of these
3 small claims. We must, where necessary, obtain a medical
4 opinion to determine the causal relationship of the con-
5 dition diagnosed.

6 THE COMMISSIONER: If an investigation of a
7 small claim is necessary an investigation is made?

8 MR. KERR: That is right, sir.

9 THE COMMISSIONER: This is done by an in-
10 vestigator?

11 MR. KERR: One of the claims investigators
12 would go to the locality to gain all the details neces-
13 sary to adjudicate the claim.

14 THE COMMISSIONER: And the medical opinion?

15 MR. KERR: We must, where necessary, obtain
16 medical opinions from our medical department concerned,
17 as to the causal relationship between the condition diag-
18 nosed by the attending doctor and the accident reported.

19 Assuming that the claim is compensable and
20 is allowed as coming within the Act, we then pay compen-
21 sation on the basis of medical evidence, the same as we
22 do for the long term compensation cases, so our approach
23 to lost time claims in adjudication is the same for a man
24 who will be off for six months, as it would be for four
25 or five days.

26 THE COMMISSIONER: I thought you agreed in
27 small claims that there was some way in which you settled
28 them with less investigation?

29 MR. KERR: Those are medical aid claims
30 only, where there is no lost time.



1 THE COMMISSIONER: Medical claims only, but
2 as far as small claims are concerned they are treated in
3 the same manner, in all respects as the larger claims?

4 MR. KERR: Exactly, sir.

5 THE COMMISSIONER: In other words, the
6 statement made in the brief of the, I think, the Motor
7 Vehicle Manufacturers' Association, that there is a prac-
8 tice growing up in the Board of paying all small claims
9 without investigation is not correct?

10 MR. KERR: That is not correct, sir.

11 THE COMMISSIONER: It is true the investi-
12 gation is the same. In other words by mail, most of it?

13 MR. KERR: We start off by mail but if it
14 can't be resolved that way --

15 THE COMMISSIONER: What if the manufacturer
16 in one of these cases raised some question, would you then
17 send out an investigator or something like this?

18 MR. KERR: We would, sir.

19 THE COMMISSIONER: But insofar as medical
20 expenses, or medical bills are concerned, they are paid
21 without question if the lost time is short?

22 MR. KERR: No.

23 THE COMMISSIONER: Where there is no lost
24 time?

25 MR. KERR: Where there is no lost time they
26 are not paid without question. They are adjudicated
27 medical "A" claims only. We do adjudicate them, they are
28 not paid automatically, but the extent of our inquiry
29 would not be as great as the lost time claims. In many
30 instances we are more inclined to give the benefit of the



1 doubt to the workman.

2 THE COMMISSIONER: I understand.

3 MR. ESTEY: Something bothers me about that.
4 In the Motor Vehicle Brief it doesn't say whether it is a
5 lost time claim or not, but says, "We have observed indic-
6 ations that they will pay without full inquiry," I take
7 it so far as you are concerned, you can't tell whether
8 this was a small claim with or without lost time?

9 MR. KERR: I think it was established during
10 his testimony that this was a lost time case, if I recall
11 correctly.

12 MR. ESTEY: I have not got to the case.
13 This is just a general principle, I take it. The general
14 principle could relate to lost time or medical aid claims.
15 He says he questions the wisdom of settlement based on a
16 doctor's opinion rather than its merits as such a practice
17 could lead to problems or fraudulent claims. More par-
18 ticularly, it could establish grounds for reopening a
19 claim for further benefits in later years. I take it
20 what they are saying is whether the claim is for lost
21 time or medical aid only, it still could form the basis
22 of a subsequent or more serious claim later on, for the
23 same type of injury.

24 MR. KERR: No claim is subject to reopening.

25 MR. ESTEY: The foundation of a claim, in
26 their opinion, which may be frivolous or fraudulent might
27 be laid by a medical aid claim, and the brief really is
28 saying you should pay the same vigilance to a medical aid
29 claim, albeit small, as a major claim.

30 MR. KERR: It could be interpreted that way.



1 MR. ESTEY: In support of the brief, Mr.
2 Tuz, on behalf of Chrysler Canada Limited filed what be-
3 came Exhibit "10". It is a letter signed by E.C. Dowd,
4 M.D., Surgical Department of the Workmen's Compensation
5 Board. The letter is dated May 11th of this year and it
6 refers to a claim number but nothing turns on the indivi-
7 dual claim. This is what the letter says:

8 "Our Medical Department has to weigh the
9 evidence and come to what we feel is a just
10 decision. While we could certainly investi-
11 gate everything very thoroughly by bringing
12 the claimant to the Board's offices for
13 examination, we must surely see in a case
14 such as the one under discussion the costs
15 involved far outweigh any advantages that
16 might occur."

17 I would suggest the correspondence in
18 this appeal is because of the cost of the claim which was
19 in the seventy-five dollar category. You have seen this
20 Exhibit "10"?

21 MR. KERR: I have.

22 MR. ESTEY: I don't know whether that is a
23 claim for lost time or a medical claim, do you know?

24 MR. KERR: Yes. Excuse me, I think I have
25 it in my notes.

26 MR. ESTEY: I would guess it is a claim for
27 lost time.

28 MR. KERR: It is a claim for lost time,
29 there is no doubt about that. Is this the claim, 6704347?

30 MR. ESTEY: Yes. I would like you to ex-



1 plain Dr. Dowd's comment, "That you must surely see in a
2 case such as the one under discussion the costs far out-
3 weigh the advantages of what might occur."

4 MR. KERR: That is right. It is not profit
5 able to investigate small claims and therefore we don't.

6 MR. ESTEY: That is the way I would read
7 that letter but perhaps it is not the Board's policy.

8 MR. KERR: Perhaps I should read the com-
9 plaint of Mr. P. Tuz of Chrysler who submits full compen-
10 sation should not be paid in this case and it will lead
11 up to your point.

12 MR. ESTEY: Is this a letter back to Chrys-
13 ler?

14 MR. KERR: No. A report to the Royal Com-
15 mission on this case.

16 MR. ESTEY: All right.

17 MR. KERR: They submit full compensation
18 should not be paid in this case since the company doctor
19 felt the workman could return to modified work. The work-
20 man smashed the top of his ring finger, right hand, as a
21 result of an accident on February 1st, 1966, at 11:50 P.M.
22 He was treated by Dr. so-and-so, and I must delete the
23 names for obvious reasons, on February 2nd. His report
24 to the Board stated the workman could return February 7th.
25 Compensation was paid from February 2nd to February 7th.
26 The workman was examined by Dr. so-and-so, the company
27 medical advisor on February 3rd. He considered the work-
28 man fit for modified employment which was refused by the
29 workman, in view of the former doctor's opinion. The
30 company submitted that compensation should not be paid for



1 the period of lost time. The employer's report of the
2 accident was dated February 3rd, but was not received by
3 the Board until February 18th, 1966, at 8:20 A.M. The
4 employer appealed the Claims Department decision and the
5 Review Committee informed the employer of the decision and
6 included a summary of opinion. Mr. Spate of Chrysler
7 Canada Limited requested guidance as to a difference of
8 opinion between the workman's physician and company doctor,
9 with respect to whether or not the workman should return
10 to modified employment. This letter was misintrepreted
11 by the medical advisor. This is the letter you are refer
12 ring to. Where doctors disagree the Company should be in-
13 formed if a doctor felt a workman could return to modified
14 employment. He should discuss the case with the attending
15 physician. If there is concurrence that the workman
16 do modified work, he should return to the work approved by
17 his doctor. In making this decision one must take into
18 consideration the man's condition and the possibility of
19 increased hazard for the workman, and the possibility of
20 increasing the hazards to fellow workmen. Where doctors
21 disagree, if the company medical advisor is of the opinion
22 that the injured workman can return to his employment and
23 this opinion is not shared by the workman's attending
24 physician, the Board should be notified immediately.

25 THE COMMISSIONER: You say in this case the
26 Board received no report from the company until the 18th,
27 and the accident happened on the 3rd?

28 MR. KERR: That is right, the accident on
29 the 3rd stretched over until the 7th, and the employer's
30 report was received in our office on February 18th.



1 THE COMMISSIONER: I think I understood
2 from your representatives and from my own survey of the
3 Board that you seek to make decisions and get payment
4 cheques out as soon as possible. In fact one of the
5 criticisms is you do not get them out fast enough, so I
6 suppose at the end of the week you try to make some de-
7 cision and get an answer back?

8 MR. KERR: In this case the employer is
9 not contesting the allowance of the claim. What they
10 are saying is we should not have paid compensation since
11 in their opinion the man should have returned to work.
12 This is what they are complaining about.

13 THE COMMISSIONER: So what you are saying
14 is that at this stage if they had some question they
15 should let you know as promptly as possible? In this
16 case the company did know on the 3rd.

17 MR. KERR: Their company doctor examined
18 the man on the 3rd, the day after the accident, and had
19 they contacted us by telephone we would have arranged
20 for a local doctor in Windsor, a specialist, to examine
21 the man and find out if he could return to that work.
22 Unfortunately, our letter to the medical officer did not
23 make that clear.

24 MR. ESTEY: The first problem is, if you
25 had found out the difference in time, you would have a
26 third opinion? The Board doesn't try to choose between one
27 or the other. They try to get a neutral opinion before
28 they leave it on the medical claims only. Does the
29 Board have any policy for speeding up payments, not auto-
30 matically, but speeding payments for less than twenty-



1 five dollars?

2 MR. KERR: We have a large volume of claims
3 here. They have to be adjudicated insofar as, is the
4 employer under the Act, is the man an employee under the
5 employer? This is not time consuming but quickly done.
6 We have to determine whether the accident arose out of
7 employment and occurred during the course of employment.
8 These factors must be determined. We are more inclined
9 to give the benefit of the doubt when it comes to the
10 relationship of lifting accidents, when there is a small
11 amount such as his doctor's account --

12 MR. ESTEY: What happens when the claim is
13 reopened at a later date?

14 MR. KERR: When a claim is reopened at a
15 later date, we have to find out his condition at that
16 time. Is it related to the accident reported and had
17 been allowed for medical aid, or if a claim is reopened
18 we have to take another look at it to see that the case
19 of the reopening is related to the accident reported.
20 Sometimes it is and sometimes it is entirely different.

21 MR. ESTEY: Taking a simple case. A man
22 gets cut but it doesn't bother him and he needs a stitch
23 or a clamp and gets some stitches. He gets a doctor's
24 bill about a week later and it comes to fifteen dollars.
25 He sends it in to the employer and the employer sends it
26 to the Board?

27 MR. KERR: Usually the doctor sends the
28 fifteen dollar account directly to us and we request a
29 report from the employer.

30 MR. ESTEY: So I have a bill and you have



1 a bill direct from the doctor and with it is a Form 7
2 or whatever it is?

3 MR. KERR: Just a medical aid account from
4 the doctor. Not a lost time accident.

5 MR. ESTEY: This fellow didn't miss any
6 time?

7 MR. KERR: Right. We don't require a Form
8 8. Just an account.

9 MR. ESTEY: How do you investigate anything?
10 All you have is a doctor's bill.

11 MR. KERR: We have a bill which gives the
12 man's name, the name of the employer, the accident, and
13 the nature of injury.

14 MR. ESTEY: As a matter of ironclad rou-
15 tine, what do you do next?

16 MR. KERR: We request a report from the
17 employer.

18 MR. ESTEY: And what does that come in on?

19 MR. KERR: Form 7. An employer's report
20 of an accident.

21 MR. ESTEY: So the only report you don't
22 have on this claim is the first doctor's report so there
23 is a delay while you get that from the employer, and the
24 employer's report comes in so what do you do next?

25 MR. KERR: We adjudicate the claim to see
26 if the accident came within the course of employment. We
27 pay the account. The man is not involved because there
28 is no compensation.

29 MR. ESTEY: Not involved, except if he has
30 to pay the hospital and the doctor, the doctor is advised?



1 MR. KERR: The hospital no. We have a
2 hospital account set up for that.

3 MR. ESTEY: So the doctor goes after the
4 man to pay the bill instead of the Board?

5 MR. KERR: I assume he does.

6 MR. ESTEY: I take it from what you say,
7 but I want to be clear, there is no policy where the
8 Board automatically pays the small medical claims?

9 MR. KERR: No. The claims are adjudicated.

10 MR. ESTEY: Not by an individual?

11 MR. KERR: No. Adjudicated by medical
12 officers in our medical claims section, a claims officer
13 and a supervisor.

14 MR. ESTEY: Is one of them doing non-lost
15 time accidents only, or how do you do that?

16 MR. KERR: We have ten claims sections for
17 compensable claims, lost time claims, medical aid claims,
18 which deals entirely with no lost time accidents, medi-
19 cal claims only.

20 MR. ESTEY: And that is reviewed exactly
21 in the same way as any other claim?

22 MR. KERR: That is right.

23 MR. ESTEY: Thank you, Mr. Kerr. Is Mr.
24 MacDonald coming?

25 MR. KERR: He said he would be here.

26 MR. ESTEY: Mr. Commissioner, we have some
27 items as a result of earlier proceedings, and it would
28 appear appropriate to have them placed on the record be-
29 fore you. First of all, a subsequent submission by the
30 United Steel Workers of America, on the issue as to



1 whether or not there are to be funds turned over to the
2 Workmen's Compensation Board of British Columbia, as
3 part of their responsibility in connection with accident
4 prevention, and Mr. Ingle, who appeared before the Royal
5 Commission, has forwarded a letter from the Workmen's
6 Compensation of British Columbia dated 24th October, 1966,
7 which says in part as follows: "Accident prevention cost
8 is charged to each class in accordance with its propor-
9 tion of total assessment. No doubt the Commission has
10 a copy of our Annual Report filed in the Legislature.
11 Reference is made to Schedule I, operating expenses,
12 which includes accident prevention." Referring to Ex-
13 hibit "B" which is a breakdown of operating expenses into
14 accident prevention, industrial hygiene and first day in-
15 vestigation it stressed, "Control is part of industrial
16 hygiene." I will avoid reading it all. It goes on,
17 "I confirm no contribution is paid from the Consolidation
18 Fund of British Columbia for, or towards the Accident
19 Prevention Department."

20 THE SECRETARY: This will be Exhibit "46".

21 EXHIBIT "46": Letter from the United
22 Steel Workers of America
23 dated 24th October, 1966,
filed.

24 Then sir, we have received some corres-
25 pondence this morning from Mr. Anderson of the Industrial
26 Accident Prevention Association.

27 THE COMMISSIONER: In British Columbia,
28 their Accident Prevention Department goes further with a
29 provision that any enforcement matter is under its juris-
30 diction as well, is it not?



1 MR. ESTEY: Yes, Mr. Commissioner.

2 We have received this morning from the
3 Industrial Accident Prevention Association, signed by
4 its General Manager, two letters dated the 28th October,
5 1966, in which Mr. Anderson forwards a number of documents
6 to which he made reference during his appearance before
7 the Commission. The documents include the report, or
8 programme guide rather, for the instructions by I.A.P.A.,
9 in accident prevention and safety procedures. Also en-
10 closed is a set of general rules and standards adopted
11 by the I.A.P.A. This is a rather interesting document.
12 It appears to be a code of safety procedures and regu-
13 lations, whether enforceable or not, and they appear as
14 regulations which state on the face of them they have
15 been approved by the Workmen's Compensation Board and
16 the Lieutenant-Governor in Council. The printed version
17 has a date on it, "Reprinted, December, 1944." I don't
18 know where the originators were set out but it was app-
19 roved by the Lieutenant-Governor in Council in the ses-
20 sions of 1919, authorized under Section 116 of the Work-
21 men's Compensation Act, which refers to the establishment
22 of the Association.

23 The other documents in the bundle of docu-
24 ments so forwarded by the I.A.P.A., include the reference
25 to the subject of one Dr. Roberts, in the labour con-
26 vention in Geneva, Switzerland, where the statement was
27 made eighty-five percent of all accidents were due to
28 carelessness and fifteen percent by the machinery in
29 question. Those are the most important and the by-laws
30 of the I.A.P.A., are also included. With your permission



1 I would like to file them as an Exhibit.

2 THE SECRETARY: This will be Exhibit "47".

3 EXHIBIT "47": Documents received from
4 the I.A.P.A., under date
5 28th October, 1966, filed.

6 There is an editorial comment in the
7 covering letter, Mr. Commissioner, that I would suggest
8 we read. It is a reiteration of the stand given to us
9 by the I.A.P.A., officers to us when they were here.

10 Then we have a submission by the Canadian
11 Tooling Manufacturers' Association, National Council.

12 THE COMMISSIONER: Was the Steel Workers'
13 letter Exhibit "46"?

14 THE SECRETARY: Yes, Mr. Commissioner.

15 MR. ESTEY: We now come to the Canadian
16 Tooling Manufacturers' Association, National Council.
17 letter dated 25th October, 1966. It is a one sentence
18 letter to the effect they strongly support the stand
19 taken by the Canadian Manufacturers' Association as out-
20 lined in their brief to the Commission. It is signed
21 Daniel C. Kay, Jr., Executive Secretary.

22 THE SECRETARY: This will be Exhibit "48".

23 EXHIBIT "48": Letter dated 25th October,
24 1966 from the Canadian
25 Tooling Manufacturers'
26 Association, filed.

27 MR. ESTEY: Mr. Commissioner, we now come
28 to the question of the residue of briefs, which are the
29 individual's briefs, who have not appeared today. Some of
30 them we have touched on rather fully. Mr. Pifer we have
dealt with. Neptune Meters has been read in, Mr. Morton's
brief was dealt with. We have Dr. Alexander Fee and the



1 Canadian Hearing Society. That leaves a residue of some
2 eight or nine.

3 THE COMMISSIONER: I would suggest that I
4 think the A. & T. Wrecking and Salvage Company should go
5 in in full. It is not so long is it? As far as the
6 various other ones are concerned from the individuals,
7 in most cases they are really seeking to appeal decisions
8 of the Board in matters upon which I have not the power
9 to deal. However, in each of them they do raise some
10 questions of policy which should be considered by this
11 Commission, and as a consequence I think in those letters
12 you can restrict yourselves to those portions of the
13 letter in which various questions of policy are raised,
14 if you find you are able to do that. If not, they will
15 all have to be read in.

16 MR. ESTEY: The letters of the adjudication
17 tion companies we will come to in a moment
18 which is most satisfactory from our viewpoint. I have
19 brief from an individual which raises the general pro-
20 blems having to do with compensation and comes in from
21 Mr. Murdo Martin, a member of Parliament, I believe, for
22 a riding in the northern part of the province. He does
23 deal with an adjudication in an individual case, but the
24 opening part of his brief deals with gold miners' chest
25 problems. I suggest we read that in as well. It has not
26 been dealt with.

27 THE COMMISSIONER: I think this gentleman
28 should be heard first, and perhaps Mr. MacDonald we can
29 hear from you now and carry on with the others later.

30 MR. ESTEY: Mr. MacDonald, you have been



1 well identified on the record as treasurer of the Board.

2 I understand we will review the branch offices of the

3 Board and the nature of them?

4 MR. MACDONALD: Thank you, Mr. Estey. I
5 apologize for being delayed at a Board meeting which
6 didn't finish when it should have.

7 Under the heading of "Regional Offices"
8 and the subheading of "Audit Offices", the Board periodi-
9 cally audits the payroll records of all employers in the
10 province on a county by county basis. Before the in-
11 dustrial expansion of the late 1940s and 1950s, small
12 groups of auditors spent short periods in more distant
13 parts of the province and travelled to and from the Tor-
14 onto office. As industry expanded, so audit volume in-
15 creased and distance and travelling time became an ad-
16 ministrative problem.

17 In 1950, a Senior Auditor was sent to the
18 Lakehead on a permanent basis to audit records in the
19 districts of Thunder Bay, Rainy River, Kenora, Patricia,
20 and Winnipeg. As the work grew, additional audit staff
21 were appointed and an office was opened in 1951.

22 THE COMMISSIONER: You mentioned Winnipeg.
23 That would be a company with headquarters in Winnipeg
24 carrying on work in the Province of Ontario?

25 MR. MACDONALD: In the Province of Ontario,
26 yes, sir.

27 In 1952, a similar office was opened by a
28 Senior Auditor in Ottawa for audit work in the Counties
29 of Carlton, Dundas, Grenville, Prescott, Renfrew, Russell,
30 Stormont and Glengarry.



1 In May, 1955, an office was opened in
2 Windsor primarily for the purpose of auditing employers'
3 records in the Counties of Essex, Kent and Lambton.

4 In June, 1956, an audit office was opened
5 in North Bay for audit work in Algoma, Cochrane, Hali-
6 burton, Manitoulin, Muskoka, Nippissing, Parry Sound,
7 Sudbury and Temiskaming.

8 Under the subheading "St. Lawrence Seaway
9 Office", in November, 1954, a temporary office was
10 opened in Cornwall to serve the needs of the Board in
11 relation to the huge influx of employers and workmen for
12 the construction of the seaway. This small office was
13 closed in August, 1959, as the Seaway reached completion.

14 Under the subheading of "Modern Communi-
15 cations", as the offices in the Lakehead, Ottawa and
16 Windsor became established, the volume increased. In
17 addition to audit work on which the greater portion of
18 the staff were employed, the offices also dealt with
19 enquiries from Head Office concerning employers' oper-
20 ations and accidents to their workmen. The district
21 staff obtained information and reports for Head Office
22 departments to speed decision making at the Toronto Of-
23 fice. Conversely, they obtained information from the
24 Head Office to answer local enquiries.

25 Teletype services were installed in the
26 regional offices to speed the flow of information be-
27 tween Head Office and the regional staff and later telex
28 equipment was installed in some locations. Telex enables
29 subscribers to deal directly by wire with either the
30 District or Head Office.



1 Under the heading "Claims Investigation
2 and Rehabilitation Services", as the services of the
3 regional offices broadened, additional staff was allo-
4 cated. In 1953, for the same reasons that audit staff
5 had been originally relocated, Claims Investigators were
6 assigned to the Lakehead and Ottawa offices. In each
7 instance, the volume of investigations in the districts
8 was such that economies could be realized. Claims In-
9 vestigators obtained all the facts on difficult claims
10 to enable the Toronto staff to decide entitlement.

11 The Board's duty is to enquire into the
12 true merits and justice of the case and to ensure equity,
13 consistency and conformity in speed and adjudication.
14 Decisions are made in the Head Office and not in the
15 Districts

16 Rehabilitation Officers were appointed to
17 the District Offices in the mid 1950s to provide them
18 with more time for personal contacts in their territories
19 by avoiding the travelling to and from Toronto. A good
20 Rehabilitation Officer must be known in his district and
21 must know his district.

22 With these changes and the diversification
23 of services, the offices were renamed District Offices.
24 The District Representatives, in addition to their basic
25 function of managing the Board's local facilities, act
26 in a public service capacity by providing general infor-
27 mation about the Board and attending meetings and semi-
28 nars to talk on compensation matters.

29 A further District Office was opened in
30 Kitchener in September, 1956, to deal with the variety



1 of assessment and claims problems occurring in the
2 Counties of Waterloo, Wellington, Huron and Perth. A
3 Claims Officer was assigned to the North Bay Office in
4 June, 1959, and Rehabilitation Officers were added sub-
5 sequently.

6 THE COMMISSIONER: Yes, well now how many
7 District Offices are there then?

8 MR. MACDONALD: There are seven District
9 Offices.

10 THE COMMISSIONER: Seven, and at the
11 District Office for each District Office you have an
12 auditor?

13 MR. MACDONALD: In every case there are
14 auditors but they are varied in number depending on the
15 number of forms there may be in the actual area.

16 THE COMMISSIONER: There are one or more
17 auditors?

18 MR. MACDONALD: Actually two or more in
19 every District Office.

20 THE COMMISSIONER: A Claims Investigator?

21 MR. MACDONALD: Not Claims Investigators
22 in every office. In some offices the Assistant District
23 Manager will do a certain amount of claims investigation.

24 THE COMMISSIONER: In each of these offices
25 there is a District Manager first, is there?

26 MR. MACDONALD: A District Manager and an
27 Assistant District Manager.

28 THE COMMISSIONER: In each of them?

29 MR. MACDONALD: Yes. In each of them
30 there are two or more auditors and we can detail them



1 for you. There are not Rehabilitation Officers in every
2 district.

3 MR. ESTEY: No Rehabilitation Officer in
4 Windsor or North Bay, I take it?

5 MR. MACDONALD: There is a Rehabilitation
6 Officer in Windsor and actually two operating out of
7 North Bay. One is located in the Sudbury Branch Office
8 in fact, which is the chest examination station.

9 THE COMMISSIONER: You talk in one sense
10 about claims investigators, and in the latter paragraph
11 you say "claims officer" was assigned.

12 MR. MACDONALD: Yes, the claims officer
13 is somewhat of a misnomer. He is not a claims officer
14 making decisions as a claims officer. He is a claims
15 trained person getting information necessary about
16 claims in the area, and doing some investigations and
17 also knowledgeable to answer questions about procedures,
18 when claims come to the district office.

19 THE COMMISSIONER: You say there isn't
20 one of these in each office?

21 MR. MACDONALD: No. In some cases this
22 particular function is carried out by the district re-
23 presentative and assistant district representative.

24 THE COMMISSIONER: What other duties would
25 the assistant representative in a district have?

26 MR. MACDONALD: Briefly their job is to
27 handle the district activity, but their main function is
28 to act as a public service representative of the Board
29 in the area. They are quite active in attending meet-
30 ings and talking on compensation matters.



1 MR. ESTEY: You mentioned seven offices,
2 but I only count five in your brief, Lakehead, Ottawa,
3 Windsor, North Bay and Kitchener.

4 MR. MACDONALD: I may have lost count.

5 MR. ESTEY: You have a Branch Office in
6 Sudbury?

7 MR. MACDONALD: Yes, that is right. Five
8 plus the sixth at Sudbury.

9 MR. ESTEY: And the one in Toronto makes
10 the seventh?

11 MR. MACDONALD: That is right.

12 MR. ESTEY: Sudbury is an x-ray office
13 opened up by a Rehabilitation Officer?

14 MR. MACDONALD: Due to the special needs
15 in that area to assist the Rehabilitation Officer in
16 the Sudbury Office, and to provide communication by
17 telex in that area to speed inquiry.

18 MR. ESTEY: Could I interrupt and ask you
19 why you have a Branch Office in North Bay, with a popu-
20 lation of twenty-one thousand, I guess it is, and Sud-
21 bury with a population of one hundred and five thousand
22 you have just a sort of sub branch?

23 MR. MACDONALD: Perhaps, if I may go on
24 to tell you what serves the area --

25 MR. ESTEY: North Bay is a District Office
26 territory?

27 MR. MACDONALD: In Algoma which settled
28 one thousand two hundred and eighty-three claims had
29 one thousand five hundred and sixty-four firms.

30 THE COMMISSIONER: Algoma would include



1 the Sault, I suppose, would it?

2 MR. MACDONALD: Yes.

3 THE COMMISSIONER: And all that area
4 around the Sault?

5 MR. MACDONALD: Yes. In the Haliburton
6 area we had ninety-four claims with two hundred and
7 ninety-eight firms. In Manitoulin thirty eight claims
8 with two hundred and sixty-six firms. In Muskoka two
9 hundred and fifty-eight claims and nine hundred and
10 sixty-five firms. In Nipissing we had seven hundred and
11 eighty-five claims with one thousand two hundred and
12 five firms. In Parry Sound there were two hundred and
13 fifty-one claims and seven hundred and seventy-three
14 firms. In Sudbury there were one thousand eight hundred
15 and thirteen claims and one thousand seven hundred and
16 ninety-eight firms. In Temiskaming we had two thousand
17 seven hundred and fifty-four claims with one thousand
18 nine hundred and eighty-five firms.

19 THE COMMISSIONER: Does Temiskaming in-
20 clude Timmins? What district is Timmins in?

21 MR. MACDONALD: I didn't check that point,
22 my geography isn't all that good.

23 THE COMMISSIONER: Mr. Kerr, do you know?

24 MR. KERR: We will get the answer later.

25 THE SECRETARY: Cochrane is the district
26 up there.

27 THE COMMISSIONER: Cochrane isn't mention-
28 ed.

29 MR. ESTEY: Is Cochrane included in one
30 of these sets of figures you give us?



1 MR. MACDONALD: Cochrane is serviced by
2 our Port Arthur Office.

3 MR. ESTEY: It says on Page I it is ser-
4 ved for audit purposes by your North Bay Office.

5 MR. MACDONALD: We have a situation depen-
6 dent on the work volume encompassed by the two offices
7 so that we interchange the different work of these two
8 locations.

9 THE COMMISSIONER: It says on Page I that
10 the North Bay Office covers Cochrane. You didn't men-
11 tion it here and this is the one we are interested in.

12 MR. ESTEY: It says for audit only.

13 MR. MACDONALD: That is the point I am
14 making. We are dealing with the audit situation.

15 THE COMMISSIONER: You are aware there is
16 an application from the Town of Timmins to have District
17 Officers established in Timmins, or a District Office?

18 MR. MACDONALD: Yes, sir. We are aware of
19 that.

20 All work relating to the firms and claims
21 in these counties is handled from the North Bay Office
22 with the exception of Vocational Rehabilitation. Since
23 two Rehabilitation Officers are needed to deal with the
24 Vocational Rehabilitation cases in Northern Ontario, one
25 man is stationed in North Bay and covers Kirkland Lake,
26 Cochrane, Timmins and Kapuskasing, and intermediate
27 points, and the other is stationed in Sudbury and covers
28 Sudbury, Elliot Lake, Blind River and Sault Ste. Marie
29 and intermediate points.

30 Claims investigation and liaison work re-



1 quiring personal contact is dealt with by the Assistant
2 District Representative located in North Bay who visits
3 Timmins as frequently as is necessary to deal with the
4 problems arising there. Other staff are engaged on
5 specialized assessment and audit work and visit all in-
6 dustries in the territory on a rotation basis and on
7 request.

8 Under the next subheading "Sudbury Chest
9 Examining Station", the Miners' Chest Examining Station
10 located in Sudbury operates on the same basis as other
11 Chest Examining Stations in Kirkland Lake, Timmins, and
12 the Lakehead. However, because of the Board's need to
13 communicate with the Rehabilitation Officer in Sudbury,
14 in Sudbury and the large concentration of industry in
15 the immediate vicinity, a telex machine has been instal-
16 led to forward phone and personal enquiries to the
17 Board's Head Office in Toronto and replies are directed
18 through the same method. Telex subscribers in the Sud-
19 bury area as in any other area may deal directly with
20 the Board's Office in Toronto through the Telex network

21 THE COMMISSIONER: I know nothing about
22 Telex. This is a private system similar to the telephone
23 system that you use, is it?

24 MR. MACDONALD: I am not personally famil-
25 iar with the method used, but when you are tied into
26 that network you have direct contact to a similar mach-
27 ine installed in the various users' offices. You can
28 communicate directly through its network to the other
29 users of the network.

30 THE COMMISSIONER: Anybody in Timmins who



1 has telex can communicate with North Bay or Toronto
2 directly?

3 MR. MACDONALD: It is a question of mes-
4 sages being printed out.

5 MR. ESTEY: It is the same as your tele-
6 phone, including the dial. You can phone a northern
7 subscriber and if they have telex you can communicate
8 there. Instead of talking you leave tracks.

9 MR. MACDONALD: The message is printed at
10 the other end as you indicate. It is printed rather
11 than spoken.

12 MR. ESTEY: Before you leave this, and
13 I don't know how important it is, but I see on Page III
14 North Bay Rehabilitation Officer covers Cochrane.

15 MR. MACDONALD: To answer your question
16 it is Temiskaming and Cochrane, covered by the District
17 of Temiskaming. Temiskaming and Cochrane are Districts.

18 THE COMMISSIONER: So this number of
19 claims covers Temiskaming and Cochrane?

20 MR. MACDONALD: I think it does. Accord-
21 ing to my map it shows Temiskaming and Cochrane together.

22 THE COMMISSIONER: What I would like to
23 know, how many claims come out of Timmins? Or if not
24 Timmins, out of Cochrane?

25 MR. MACDONALD: I have that in my notes
26 somewhere here, sir.

27 MR. ESTEY: Perhaps you are coming to
28 that. The Timmins Chest Examination Station, Mr. Mac-
29 Donald.

30 MR. MACDONALD: I guess it doesn't answer



1 how many are in Timmins. It says the volume from Tem-
2 iskaming, which includes Cochrane is approximately three-
3 eights of the total volume of the entire area.

4 THE COMMISSIONER: Three-eights?

5 MR. ESTEY: Of the two districts?

6 MR. MACDONALD: Yes. Three-eights of the
7 total volume handled by North Bay comes from Temiskaming
8 County, which includes Timmins. The volume of claims
9 reported from Temiskaming County, which includes the
10 City of Timmins, is approximately three-eights of the
11 total volume for the entire area.

12 THE COMMISSIONER: You now tell us it is
13 Temiskaming and Cochrane. That is, the two thousand
14 seven hundred and fifty-four you show as claims is about
15 one-third of the total?

16 MR. ESTEY: We had a problem with that
17 statement but we have the authority of the Almanac and
18 Mr. Johnson is right. Timmins is in Temiskaming and
19 Cochrane. Those figures include the District of Temis-
20 kaming and Cochrane and those added together amount to
21 three-eights of the total.

22 THE COMMISSIONER: That is right but it
23 doesn't answer the question.

24 MR. MACDONALD: It doesn't answer the
25 question of how many from Timmins.

26 THE COMMISSIONER: From the County or the
27 District?

28 THE SECRETARY: They shouldn't be called
29 Counties, they are Districts.

30 THE COMMISSIONER: We are going to be



1 given that information are we? I would like to have
2 that.

3 MR. MACDONALD: The number from the City
4 of Timmins, we would have difficulty analyzing it on a
5 city basis. We don't have city breakdowns. We have a
6 city breakdown of the number of firms but not of the
7 number of claims.

8 THE COMMISSIONER: Temiskaming and Coch-
9 rane is a pretty large area. You have paper and pulp
10 mills and, in any event, lumbering.

11 MR. MACDONALD: Again our coding is on
12 the basis of the combined Districts of Temiskaming and
13 Cochrane. We would have to do quite a bit of work to
14 analyze if they were out of those two Districts.

15 THE COMMISSIONER: Timmins has failed to
16 produce anything to help us, but I thought I would get
17 it from you. How much came out of that area?

18 MR. MACDONALD: You couldn't possibly set
19 up a District Office just to deal with the volume we
20 have here. We have tried.

21 THE COMMISSIONER: You mean if the whole
22 twenty-seven hundred came out of Timmins it wouldn't
23 justify a District Office?

24 MR. MACDONALD: You couldn't possibly
25 justify it.

26 MR. ESTEY: That would be proven by the
27 fact you have four thousand in Sudbury and Algoma to the
28 west, but you situated the office in North Bay rather
29 than Sudbury?

30 MR. MACDONALD: Purely because of the



1 facilities for travel that existed at that time. There
2 has been a change in the highway network since then,
3 but at that time the spot that had the greatest access-
4 ibility was North Bay.

5 MR. ESTEY: But there would not be enough
6 to run an office in Sudbury, with just the four thou-
7 sand?

8 MR. MACDONALD: We think no, not until we
9 have six or seven thousand.

10 Under the heading of "Timmins Chest
11 Examining Station", this office does not deal with en-
12 quiries outside those dealing with miners' examinations
13 and x-rays. Enquiries from the Timmins area are gener-
14 ally made of the North Bay Office and where they cannot
15 be dealt with promptly by telephone, personal visits
16 are arranged.

17 The Rehabilitation Officer situated in
18 the North Bay Office visits the Town of Timmins every
19 second week. The District Manager from North Bay also
20 visits Timmins, Kirkland Lake, Hearst, and Kapuskasing,
21 on a regular basis.

22 During these visits, calls are made to
23 the local hospitals, employers, unions, and civic offices,
24 if problems exist. In connection with the Town of Tim-
25 mins, the Welfare Officer telephones the North Bay Office
26 if he has problems between visits and they are resolved
27 during discussions or by having the Rehabilitation
28 Officer or other personnel from the North Bay Office
29 visit Timmins. In case of an emergency, the staff will
30 go to Timmins at any time.



1 Telex subscribers in the Timmins area can
2 contact the Workmen's Compensation Board direct at its
3 Toronto Office or via the North Bay Office at the same
4 cost.

5 Under the heading "District Offices", the
6 District Offices have evolved historically and the
7 administration of these offices is expensive public
8 relations. The Board can justify as economic district
9 audit offices and district rehabilitation offices but
10 the adjudication of claims is not improved by District
11 Offices.

12 THE COMMISSIONER: How do they do it in
13 England where they are all dealt with at the grass
14 roots level?

15 MR. MACDONALD: Frankly, sir, I cannot
16 comment on that. I am not knowledgeable about it. I
17 think you will find though that professional people who
18 have our type of problem, who have to make a decision
19 based on evidence will make the decision centrally.
20 They do not set up District Offices other than for in-
21 formation gathering or sales offices, or doing a public
22 function or perhaps a collection function.

23 THE COMMISSIONER: Certainly that is the
24 case in this country at any rate.

25 MR. ESTEY: Is there a Rehabilitation
26 Officer in all six of these Branch Offices?

27 MR. KERR: We have a Rehabilitation Of-
28 ficer in Ottawa, Kitchener, Waterloo, Windsor, one at
29 the Lakehead in Port Arthur, and two working out of
30 North Bay. The answer would be yes.



1 MR. ESTEY: One of whom would be in Sud-
2 bury, so the answer would be yes?

3 MR. KERR: Yes.

4 THE COMMISSIONER: I have no further
5 questions Mr. MacDonald.

6 MR. ESTEY: We have the individual briefs
7 on matters of principle which we may now read into the
8 record sir. The demolition briefs have been read in
9 part, but it was agreed it better to put them all on
10 the record again. I think A. & T. Wrecking was read
11 in part and also completely.

12 THE COMMISSIONER: Then it is not neces-
13 sary to do it again.

14 MR. ESTEY: Pollett has only been refer-
15 red to.

16 THE COMMISSIONER: A. & T., are you
17 going to read A. & T.?

18 MR. GUTHRIE: I am fairly certain it has
19 been read if not virtually in its entirety. A. & T. is
20 the firm in Hamilton.

21 THE COMMISSIONER: Complaining about the
22 classification?

23 MR. GUTHRIE: Complaining for one thing
24 about the fifteen percent rate on demolition firms
25 being exorbitant.

26 MR. MACDONALD: I believe that brief was
27 attached to my report on that particular point and it
28 was read into the record.

29 THE COMMISSIONER: All right.

30 MR. GUTHRIE: The next is M. J. Pollett



Nethercut & Young

Toronto, Ontario

27-1-66

and that is a Kingston firm. The brief is dated August 2nd, 1966, and reads:

"I am the sole proprietor of the business which bears my name. My son Robert Pollett is my foreman in conjunction with the demolition business. I also operate a lumber yard, both new lumber and building materials are sold. When public meetings are held to discuss compensation we would like to be represented to state our views on the rates of assessments and the methods of arriving at the rates. and the operation of a new and used lumber yard.

"One rate of assessment for the entire business, we think for the demolition business is unrealistic and unfair. Rates of assessment should be based on three factors, (a) the locality where the work takes place, (b) the height of the building being torn down and (c) the safety record of the demolition firm doing the work."

THE COMMISSIONER: Stop there. I think Mr. MacDonald said the Board had no statistical evidence to show that the locality or the height of the building being demolished had any effect on accident frequency in this industry, but I am not sure whether he said he knew one way or the other or was going to substantiate it.



1 MR. MACDONALD: We have tested with a
2 survey whether the height made any difference in con-
3 struction going up or coming down, and the answer is
4 it doesn't. Certainly there isn't any significant
5 variation in districts. There would be the variations
6 of luck, but not enough in a local situation which
7 would be significant.

8 MR. GUTHRIE: As to the safety record, do
9 you recall whether the demolition business is on the
10 merit plan?

11 MR. MACDONALD: The point I made, Mr.
12 Commissioner, the present rate and the fact there is
13 a separate rate, is the result of the trade association.
14 The only trade association that represents this total
15 industry and we have this separate rate basically at
16 their request.

17 MR. GUTHRIE: Were they polled to go on
18 the merit plan?

19 MR. MACDONALD: As an additional factor,
20 no.

21 THE COMMISSIONER: They didn't go for
22 the merit system?

23 MR. MACDONALD: No, sir, they didn't.

24 MR. GUTHRIE: The brief goes on, " the
25 rates of the association would be higher in the larger
26 cities where the risks are greater and the individual
27 firm would support each firm to be safety conscious, in
28 order to change from the latest rate. The unsafe or
29 accident prone organization would soon be out of busin-
30 ess and one of the reasons for the high rate would be



Nethercut & Young

Toronto, Ontario

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removed. Attached is a schedule of the Workmen's Compensation Board assessment from 1959 to June 30th, 1966, which illustrates the following facts which speak for others as well as showing our safety record is good.

"1. The rise in rate of assessment from four point five percent to fifteen percent in 1966.

"2. What was assessed from 1959 to June 30th, 1966.

"3. The compensation paid the employees and paid by this firm in that same period.

"4. Medical aid for the period.

"5. The total of compensation and medical aid for the period.

"6. The excess of the amounts paid by us over the amounts paid out by the Compensation Board to our employees from 1959 to 1966."

The brief concludes with mentioning a letter written to the Board stating these same views, and attaching the schedule for the period 1959 to 1966, which I think we have examined several times before, Mr. Commissioner. In the case of this firm it shows an excess of assessment over accident costs in 1959 of six hundred and sixty-seven dollars, rising by 1963 to thirty-five hundred odd dollars and in 1965 to thirty-seven hundred dollars and in 1966 up to June 30th, four thousand one hundred and ninety-two dollars and forty-one cents. The total for that period of seven years of assessments is twenty-one thousand odd dollars and the



1 excess of their assessments over costs paid is sixteen
2 thousand odd dollars.

3 Then we have the brief of Mr. Murdo Mar-
4 tin referred to a moment ago. Are there copies Mr.
5 Johnson?

6 THE COMMISSIONER: We can leave that un-
7 til after lunch, Mr. Guthrie, and we will adjourn until
8 2:00 P.M.

9
10 *****

11
12
13 --- The Commission adjourned
14 until 2:00 P.M.

15 *****
16
17

18 MR. GUTHRIE: Mr. Commissioner, I was
19 going to begin the brief of Mr. Martin on Gold Miners'
20 Chest Problems, but I see that Mr. Osler is here and
21 maybe it would be convenient if he went ahead at this
22 time.

23 MR. OSLER: Just as the Commission wishes.
24 It will be on the rehabilitation section.

25 THE COMMISSIONER: I am quite willing.

26 MR. OSLER: I am here for the afternoon.

27 THE COMMISSIONER: We are in the process
28 of reading material in so you can suit yourself.

29 MR. OSLER: I am at the Commissioner's
30 personal pleasure.



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1 THE COMMISSIONER: Then we will proceed
2 in the present way. Mr. Osler can follow.

3 MR. GUTHRIE: The Martin brief reads:

4 "May I express my sincere appreciation
5 for the opportunity to make a submission
6 to this Commission set up to examine the
7 Workmen's Compensation Board.

8 "The Brief is not a scientific document

9 It is merely a layman's observations of
10 conditions and problems which have come
11 to my attention over many years. It is
12 based on both my personal experience

13 a gold miner and associations with gold
14 miners for over thirty years. More par-
15 ticularly it is based on the many hun-
16 dreds of problems which have come to my
17 attention in my duties as an M.P. for a
18 gold mining area for the past ten years.

19 "It is true that Workmen's Compensation
20 is a provincial matter and I am a federal
21 M.P. but this does not alter the fact
22 that I get an average of about fifteen
23 compensation cases per week to deal with
24 which clearly is an indication of the
25 severity of the problem. These range
26 from simply giving advice or making out
27 reports, to presenting appeals to the
28 Appeal Tribunal and indeed to the Board
29 itself.

30 "In accordance with the telephone con-



versation held yesterday, I am confining this Brief to the problems pertaining to chest conditions and I hope to bring certain other problems and suggestions to your notice at a future date.

"This Brief will deal with three main points. The adequacy of the term 'Industrial Diseases' as it pertains to gold miners. The adequacy of the detection of the disease silicosis at the present time, and finally the situation of actual silicosis pensioners who succumb from conditions other than the one for which they were receiving a pension.

"The problem of chest conditions or disabling conditions pertaining to the pulmonary tract is one which has plagued the mining industry and more particularly the gold mining industry throughout its history.

"It is rare indeed to find a gold miner who has worked more than twenty years underground or has been exposed to silica dust in the mill or crusher house, who does not suffer from the problem of short breath, pain and discomfort in the chest, excessive coughing, etc.

"It is all too familiar a pattern. My files are filled with the cases of gold miners in their early sixties, in their



1 fifties and even quite a number in their
2 forties who are so seriously disabled
3 that they are prevented from earning
4 their living except in the lightest pos-
5 sible jobs, if and when such are avail-
6 able, and they receive no pension

7 "It must be kept in mind that these men
8 cannot be considered to be average men.
9 The Silicosis Act of Ontario, Section 2,
10 provides, with penalties for violation,
11 that 'no person shall be employed in an
12 industrial process involving a silica
13 exposure --- unless he is the holder of
14 a health certificate issued under the
15 Regulations'.

16 "This clearly has eliminated from the
17 ranks of gold miners any man who might
18 have any pulmonary defect, present or
19 past. Furthermore, the law required
20 these men to be re-examined at least
21 yearly as long as they continue to work
22 under exposure to such silica dust. It
23 is obvious that these men are, and con-
24 tinue to be, in a very carefully selected
25 category.

26 "Why, under such circumstances, do we
27 find so many of these picked men, who
28 should normally be in the prime of life,
29 to be instead mere shells of the men they
30 were just a few years before, to be



1 physically unable to earn their living
2 and to be forced to fall back on the wel-
3 -fare rolls of their municipalities.
4 "My submission is that the reasons are
5 two-fold. First the definition of 'In-
6 dustrial Diseases' as it pertains to
7 gold miners is too restrictive. Secondly,
8 the methods of detecting the disease
9 silicosis as defined in the Workmen's
10 Compensation Act are not adequate to cope
11 with the problem.
12 "To my knowledge the only Industrial
13 Diseases of gold miners recognized as
14 compensable by the Workmen's Compensation
15 Board are silicosis and pneumoconiosis
16 In recent years, through better ventil-
17 ation methods in mining, and possibly
18 through the process known as aluminum
19 dust therapy, there has been a marked
20 decline in the number of compensation
21 claims established for these diseases.
22 "However, this has not been accompanied
23 by a similar decline in the number of
24 gold miners who have become partially or
25 totally disabled as a result of chest
26 ailments. Rightly or wrongly, the feel-
27 ing is widespread throughout the gold
28 mining communities that aluminium dust
29 therapy, for example, has been more suc-
30 cessful in hiding silicosis than in



1 curing or preventing it.

2 "The feeling is widespread that the many
3 diseases now being diagnosed as emphysema,
4 bronchitis, asthma, etc. and even carci-
5 noma of the lungs are caused by, or have
6 a definite relationship to, the damage
7 done to the pulmonary tract by exposure
8 to the dusts of the gold mining industry.

9 "I must frankly admit that I do not have
10 technical evidence or statistical data
11 to make an irrefutable case in this field.
12 Furthermore, I have neither the facilities
13 nor indeed the time to pursue this mat-
14 ter as I feel it should be pursued. I
15 can only relate the facts and describe
16 the situation as I have found it from
17 personal contact and observations

18 "The symptoms of silicosis and pneumo-
19 coniosis are almost identical. The only
20 difference in their definition is that
21 silicosis is defined as resulting from
22 exposure to silica dust while pneumo-
23 coniosis results from exposure to dust.

24 "In far too many cases, men have endeav-
25 oured for years to establish a silicosis
26 pension without success. Ashing of lung
27 tissue at post mortems, or in some cases
28 post mortem alone, has proven at last
29 that they did indeed suffer from silicosis;
30 in some cases advanced stages of silicosis."



1 THE COMMISSIONER: I wonder what he means
2 by ashing of lung tissue. I understood that where
3 silicosis occurs there was a sort of fibrotic condition
4 that could be demonstrated. It could be demonstrated,
5 if not detected earlier, it could be demonstrated by
6 a post mortem but ashing, I wonder what that is.

7 MR. ESTEY: I presume that is a burning
8 of the tissue under pressure but the silica wouldn't
9 have burned.

10 THE COMMISSIONER: That may be. There
11 is some evidence of silica dust in the lungs but there
12 wasn't a fibrotic condition that came where the disease
13 had started. Maybe we can find out from someone what
14 the word "ashing" means.

15 "As you can see this imposes unfair and
16 unwarranted deprivation, anxiety, and
17 suffering on such workmen and their
18 families.

19 "Whether existing methods of detection
20 can be improved is a question only Medi-
21 cal Science can answer. However, fail-
22 ing any improvement in detection, the
23 onus seems to be on the Workmen's Com-
24 pensation Board to relax the strictness
25 of present decisions and grant a greater
26 degree of 'benefit of doubt' to such
27 workmen.

28 "The families of past and present work-
29 men who were or are receiving a pension
30 for silicosis are faced with a serious



1 problem. If the death certificate of
2 any such pensioner shows as the cause of
3 death anything other than 'death due to
4 silicosis', the family is cut off with-
5 out a cent.

6 "This appears to be unfair for more than
7 one reason. It leaves the family at the
8 mercy of a possible typographical error
9 in some doctor's office. It is a well
10 known fact that most, if not all, of our
11 doctors, are severely overworked and
12 just do not have the time they themselves
13 would like to devote to each case.

14 "Different doctors may make a different
15 diagnosis of any given patient. I know
16 and can supply evidence where one death
17 was diagnosed by three different doctors
18 as follows: 1. Carcinoma of the aeso-
19 phagus; 2. Cerebral hemorrhage;
20 3. Coronary thrombosis. In this case,
21 a post mortem was carried out by special
22 order of the deceased man and number
23 three was confirmed as the actual cause
24 of death.

25 "In most cases, however, no post mortem
26 is carried out and this could lead to
27 unintentional errors which could impose
28 a lasting financial penalty on the family
29 of the deceased pensioner.

30 "Last, but far from least, I have dis-



1 cussed this situation with many doctors
2 and all agree that badly impaired or
3 damaged lungs place a great stress on
4 the heart and other vital organs, and
5 there is a strong possibility that these
6 over-taxed organs fail long before their
7 normal time because of the industrial
8 disease suffered by the pensioner.

9 "Unfortunately, there have been no stu-
10 dies made in this field that I have been
11 able to find. It would seem desirable
12 that such a study be made, and pending
13 decisive results of such study, that
14 greater consideration be given to such
15 cases.

16 "To sum up it would seem that in view of
17 the numerous problems arising consist-
18 ently in the gold mining industry that
19 the following steps should be taken.

20 "1. Studies should be undertaken and
21 steps taken to ensure that the present
22 definition of industrial diseases as it
23 pertains to gold miners is, in fact, ad-
24 equate to cover and protect men in this
25 industry.

26 "2. That if present methods of detecting
27 the diseases silicosis and pneumoconio-
28 sis cannot be improved, steps be taken
29 to give greater consideration to the
30 'Benefit of doubt' clause to ensure



1 fairness to these workmen and avoid un-
2 necessary financial privation to the
3 families of men who eventually prove to
4 be eligible for benefits.

5 "3. That greater consideration and
6 study be given in cases where silicosis
7 pensioners die from some ailment other
8 than their compensable one. Thus, if
9 it is reasonable, or logical to conclude
10 that the fatal ailment could have been
11 caused or hastened by the compensable
12 disease from which the man suffered,
13 then the family of the deceased pensioner
14 shall continue to be covered.

15 "All of which is respectfully submitted."

16 MR. GUTHRIE: He would endorse the views
17 of our medical witnesses as to the need for such study
18 in this field, but he admits the evidence is lacking
19 as to the relationship with emphesyma and bronchitis
20 and these other chest ailments. The man himself in
21 his brief makes the point of the stress on the other
22 organs of the body, and I think the Board told us it
23 was the right heart failure that was recognized as a
24 direct link to silicosis, but no other organ was treated
25 in that fashion, and the medical men felt there was not
26 sufficient link established in their science.

27 To proceed with the individual briefs,
28 Mr. Commissioner, Elman W. Campbell, but perhaps be-
29 fore I do so I should have mentioned, Mr. Commissioner,
30 in Appendix 'A' to Mr. Martin's Brief is an individual



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1 case of a diseased cillicotic including correspondence.
2 Because it was an individual claim I did not think it
3 needed to be read into the record. Would you like me to
4 deal with the case that is attached?

5 THE COMMISSIONER: The case that is attach-
6 ed. I don't think you need do it. He refers to a case
7 where the autopsy indicated there was silicosis, but there
8 was no sign of this at his last examination in 1957, and
9 his death was in 1960 or something or other.

10 MR. ESTEY: He was killed in an automobile
11 accident.

12 THE COMMISSIONER: It does not indicate
13 what had happened in the meantime. He may not have had
14 any examination or been working in the mines or anything
15 else. In the other case, it is hard to believe one could
16 confuse carcinoma of the aesophagus with silicosis or
17 pneumoconiosis when he died of coronary thrombosis.

18 MR. GUTHRIE: Then, if I might move to the
19 Brief of Elman W. Campbell. This gentleman from Newmarket,
20 I won't read the letter in full Mr. Commissioner, while a
21 Chemical Engineer student at the University of Toronto
22 took summer employment in 1928 with Dome Mines, and in an
23 accident in that year he lost the vision of both eyes and
24 since he is totally blind he receives a pension which
25 originally was eighty-two dollars and fifty cents per
26 month. This was raised in 1965 to one hundred and twenty-
27 three dollars and seventy-five cents per month. The point
28 he makes really begins in the penultimate paragraph on
29 the first page where he states:

30 "I understand that pensions paid by the



1 Workmen's Compensation Board are based on
2 assessments made by the Board on the vari-
3 ous industries throughout the province, and
4 this assessment in turn depends upon the
5 amount of wages paid to workers in the in-
6 dustry during the year the claim was made.
7 In 1928 the average payroll of an industry
8 was less than one-quarter of what it is
9 today pro-rated over the same number of
10 employees. Therefore the pension paid on
11 any claim would be less than one-quarter of
12 the pension paid for a similar claim incur-
13 red in 1966."

14 I am not sure that follows. He goes on to
15 say:

16 "There are probably very few workers in my
17 category, and no one sufficiently interested
18 to present their claim for additional con-
19 sideration by the Board.
20 "A point for comparison is the Ontario
21 Teacher's Federation. This is a strongly
22 organized federation of educated men and
23 women, who have been able throughout the
24 years to make representation to the Ontario
25 Government to have additional funds made
26 available to the Federation to enable them
27 to pay pensions in excess of the pension a
28 teacher would have received in 1928. As
29 the cost of living rose, so also did the
30 superannuation pensions received by retired



members of the Teacher's Federation.

"If the Ontario Government can make additional funds available commensurate to the cost of living for one group of workers, why can it not do likewise for another group, by making additional funds available to the Workmen's Compensation Board for distribution among workers receiving pensions due to injuries received at a time when the cost of living was much less than it is today. I know that the decisions of the Board are final, but it appears very unfair to me that a person today receiving any given injury necessitating a pension for the rest of his life should receive several times more than another person who received a similar injury thirty-five to forty years ago. I believe that all pensions paid through the Workmen's Compensation Board should be based on the cost of living at all times."

Then the Brief of Mr. G. Charity. He writes from Quebec, June 25th, 1966. Again to move along into the letter, he tells us at age twenty-three in 1935, he was struck by a Coca Cola truck while painting guard posts on the side of the highway. As a result of that his left leg below the knee was shattered, both bones compound and the ankle was fractured. As a result, he was awarded twelve dollars and fifty cents a week on which he had to keep a family of four. After four years he could walk a



1 short distance without crutches and the Board paid him
2 off with four hundred dollars. On the second page he
3 makes the point about the cost of living and Mr. Charity
4 says:

5 "I have since tried to have the Board bring
6 this pension up in line with today's stan-
7 dards, but was flatly refused."

8 He then speaks of various attempts to have
9 the Board's decision reviewed. He says he has taken sum-
10 mer employment flying a bush aircraft and was then hurt
11 in an aircraft two years ago, and has little hope of just
12 treatment from the Board. He then speaks of the widow's
13 pension of seventy-five dollars a month which he considers
14 degrading in amount. He goes to the gold mining industry,
15 which he is also familiar with, and finds a large percen-
16 tage of the illness of miners are connected with silica
17 dust, the result being he can hardly breathe and he says
18 such cases are invariably diagnosed as either T.B. or
19 emphysema, neither of which are pensionable by the Board.
20 The only lung disease that is pensionable is silicosis,
21 but strange as it may seem, these men with rock dust in
22 their lungs never seem to have silicosis.

23 We have heard other evidence on that point,
24 Mr. Commissioner. He goes on to say that the section of
25 the act which was used so effectively by Coca Cola with
26 the help of the Board, is if he remembers correctly Part
27 I, Schedule 9, Subsection (5). He concludes by saying
28 he may put his case in the form of a printed booklet. It
29 is a wide ranging submission, Mr. Commissioner and it
30 touches on the cost of living and the widow's pension.



1 THE COMMISSIONER: It might be what he is
2 generally concerned with is --

3 MR. GUTHRIE: I tried to track down that
4 reference he made to the statute and couldn't find any-
5 thing related to his problems.

6 THE COMMISSIONER: Well, he is obviously
7 referring to the fact, I think, of Section 9, Subsection
8 (6) of the Act.

9 MR. GUTHRIE: Which denies him the right
10 to action against Coca Cola and denies him the right to
11 go against anyone in Section 1.

12 Mr. Arthur L. Court, from Sault Ste. Marie,
13 wrote to the Commission on July 5th. He has a number of
14 suggestions but they are not all related to each other,
15 but I might perhaps read them.

16 "There is a definite lack of information
17 given to the employee concerning disability
18 payments. The employee is allotted a mon-
19 thly payment at the sole discretion of the
20 Board who, in turn, refuse to relate the
21 basis on which the employee is being paid.

22 "An employee receiving compensation payment
23 of seventy-five percent of six thousand
24 dollars, which is the maximum payment, is
25 suffering a monetary loss when he is em-
26 ployed in a high wage rate area such as
27 Sault Ste. Marie, Sudbury, or Sarnia. For
28 example, compensation should be seventy-
29 five percent of the total of the previous
30 months earnings.



1 "In the case of permanent disability, an
2 employee should be paid the amount he would
3 normally be entitled to earn had he not
4 been disabled.

5 "There is a dire need for a third party to
6 be involved when a dispute arises between
7 the Board and the injured workman. As it
8 stands now, the arbitrary position of the
9 Board affords no other alternative to the
10 workman involved.

11 "A workman with a permanent disability is
12 at the mercy of the employer and if he is
13 refused employment suitable to his condition,
14 is then left to be dealt with by the Com-
15 pensation Board

16 "The case of the injured employee returning
17 to work prematurely on orders from the com-
18 pany doctor should be investigated to the
19 fullest extent. It appears that the policy
20 of the company is to get an employee back
21 on the payroll as soon as possible, to
22 avoid compensation payment to the Boards.

23 "There seems to be a difference in daily
24 living allowances issued by the Board for
25 individuals who must stay in Toronto Hotels.
26 All rates and information should be clearly
27 stated in the letter sent to the employee
28 prior to arrival in Toronto."

29 I think each of these might be said to be
30 a different point, Mr. Commissioner.



1 THE COMMISSIONER: All of them have arisen
2 with the exception of the one about the amounts, and I
3 think we will consider that letter together with the
4 other reports.

5 MR. GUTHRIE: Then we have Mr. Michael
6 Dooley of Dundas.

7 THE COMMISSIONER: There was one point in
8 that last submission on the lack of information re the
9 basis of allowances. When an allowance is made, Mr. Kerr,
10 does a letter state on what basis?

11 MR. KERR: No, it doesn't, sir, but if a
12 worker inquires as to the basis of his pension we furnish
13 that information.

14 MR. GUTHRIE: Mr. Michael Dooley, of Dun-
15 das, was injured in 1959 when he received a blow to his
16 knee. The only treatment the doctor recommended, as far
17 as I can read, was short-wave, and he didn't lose any
18 time through the accident. However, the injury was
19 aggravated to the point where surgery was needed and time
20 was ultimately lost at the time of the surgery, I suppose
21 in 1966 when he made his claim for compensation. His
22 rate was taken from his first injury in 1959 which is,
23 briefly, his complaint.

24 THE COMMISSIONER: This is Dooley?

25 MR. GUTHRIE: Michael Dooley.

26 THE COMMISSIONER: He was injured in 1959?

27 MR. GUTHRIE: With no lost time.

28 THE COMMISSIONER: But it was reported was
29 it? Apparently it was. They accepted it -- the Board
30 accepted it -- but whether it did or not the compensation



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1 is based in 1959, though he had to give up work in what
2 year?

3 MR. GUTHRIE: January of this year.

4 THE COMMISSIONER: He gave up work in 1966
5 but the pension was based on the earnings in the prior
6 twelve months or four months prior to the accident in 1959.
7 Let us look at that section. What is the section, Mr.
8 Kerr?

9 MR. KERR: Section 48.

10 MR. ESTEY: On Page 20.

11 MR. COMMISSIONER: Forty-eight.

12 MR. KERR: Where a workman has been awarded
13 compensation for permanent disability and returned to em-
14 ployment he is entitled to, he shall be paid on either
15 the average weekly earnings as of the date of the accident,
16 or the average weekly earnings at the date of recurrence.

17 MR. COMMISSIONER: In other words, if he
18 was awarded at this time, in 1959, some compensation for
19 permanent disability and returned to work, and then in
20 1966 the Board could have allowed his compensation on the
21 basis of his earnings immediately prior to ceasing work
22 in 1966. That is if he had a permanent disability in the
23 first place. But he didn't. He kept on working so am I
24 correct in this -- in the case of just a partial dis-
25 ability, with no permanency award in 1959, and he finally
26 has to by reason of a recurrence, has to give up work in
27 1966, there is nothing in the Act to allow you to treat it
28 in the same way as when there is a permanent disability?

29 MR. KERR: In the absence of permanent dis-
30 ability we must base the compensation on the pre-accident



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1 earnings. If he had received a permanent disability, or
2 as a result of his treatment now we knew he would receive
3 a permanent disability in the future, if either of those
4 conditions were present we could base his compensation on
5 his recent earnings if greater than the pre-accident earn-
6 ings.

7 THE COMMISSIONER: Where there is permanent
8 disability it is plain. Where is the section that you
9 act under when you give disability allowance in 1966?

10 MR. KERR: I don't quite follow that, sir.

11 THE COMMISSIONER: He gets an allowance in
12 1966. A permanent disability allowance, but it is based
13 upon his pre 1959 earnings, is that right?

14 MR. KERR: That is right sir.

15 THE COMMISSIONER: Where do we find out the
16 section under which we give him compensation for his per-
17 manent disability in 1966?

18 MR. KERR: Under Section 42.

19 MR. GUTHRIE: And that refers you back to
20 Section 40.

21 MR. KERR: His permanent disability would be
22 on his pre-existent earnings, but his temporary compen-
23 sation would be based on his current earnings as total
24 disability has been, or will be awarded in the future.

25 THE COMMISSIONER: So Section 42 refers you
26 back to Section 40 and Section 40 says that temporary dis-
27 ability results from the injury and compensation shall be
28 paid on seventy-five percent of the weekly earnings during
29 the twelve months/ previous. In other words, "previously injured," you
30 interpret in Section 42, which refers to Section 40, which



1 states it must be to the previous twelve months.

2 MR. KERR: His permanent disability award.

3 MR. GUTHRIE: You take the word "injury" to
4 be the injury in 1959?

5 MR. KERR: There is only one injury, the
6 other is a recurrence. If there were a further injury
7 there would probably be set up a new claim and a new
8 accident, but in this case he is talking a straight re-
9 currence of his injury, which took place in 1959 and there
10 was no lost time until January, 1966, so it is under one
11 claim.

12 MR. ESTEY: You mean there wasn't any new
13 physical contact?

14 MR. KERR: That is right, sir, and what he
15 is saying is that in the lost time in 1966, we based his
16 compensation prior to the accident in February 1959,
17 which is correct. The only exception we can make is if
18 he had a permanent disability award, or is to receive one
19 in the future. This Section 40 (a) comes into play but
20 it only applies to this section where permanent disability
21 is involved or will be involved.

22 THE COMMISSIONER: Thank you. Well, we will
23 have to take a look at that one.

24 MR. GUTHRIE: Mrs. Harriet King, of London,
25 has a brief letter.

26 THE COMMISSIONER: It seems to me that in
27 any event the necessity of making that interpretation
28 doesn't furnish any great incentive for a man to return
29 to work, and working as long as he can after the accident.

30 MR. GUTHRIE: Mrs. Harriet King has a short



1 letter to you from London, dated June 20th, 1966. Mrs.
2 King is a widow with four children whose husband was
3 killed while at work. She makes two points, the pension
4 she finds very inadequate and secondly the Compensation
5 Board should pay for the Ontario Hospitalization Insurance,
6 as she is unable to do so.

7 THE COMMISSIONER: Is she suggesting it
8 should be in addition to her pension?

9 MR. GUTHRIE: I would take it that is her
10 idea, Mr. Commissioner, but apart from that altogether,
11 I would think the principle point is the amount of the
12 widow's benefit. We have seen that it doesn't seem to
13 have arisen at the same rate as the orphan's pension.

14 Then we have a letter from Mrs. Hilda Lewis
15 from South Porcupine, who writes on behalf of her husband
16 who was injured at the Pamour Porcupine Mine in 1938, at
17 a time when his hourly rate was fifty-two cents an hour.
18 He was awarded a pension of forty dollars a month and that
19 must have been a permanent partial award, I think, because
20 he did resume his duties as well as he could, until March
21 of 1960 when he became permanently disabled. I beg your
22 pardon, this letter is not clear. He did continue working
23 until March of 1960, at age fifty-five and finally in
24 October, 1963, he was permanently disabled and could not
25 work. In 1961 his pension was increased to fifty-one
26 dollars and twenty-five cents and in 1965 to eighty dollars.
27 Coming to the third page of the letter, she says:

28 "We are hoping a recommendation can be made
29 that when a man is permanently disabled
30 that his pension will then be based on his



1 rate of pay on his last day of work."

2 THE COMMISSIONER: This is the same problem
3 we have just been discussing.

4 MR. GUTHRIE: She goes on to say her husband
5 has arthritis and also Parkinson's Disease and she makes
6 the point that the Board apparently does not recognize
7 nervous disorders, although the Honourable Mr. Rowntree
8 was supposed to have mentioned nervous disorders arising
9 out of accidents may be brought into the Act, but she does
10 not think anything was done about it.

11 THE COMMISSIONER: We have heard the medical
12 staff of the Board are keeping up with the science, and
13 it recognizes nervous disorders in certain cases.

14 MR. GUTHRIE: Now we have a letter from
15 Robert J. McKinstry. He says he does not want to burden
16 you with his troubles but he asks the question as to
17 whether the present pensions paid to disabled workmen will
18 be discussed but he makes no recommendation.

19 I beg your pardon, Mr. Commissioner, a sub-
20 sequent letter was received by the Secretary from this
21 same gentleman only this month. He states, " it is not
22 possible for me to attend in person," but due to his in-
23 jury he is making less money now than in 1959 when he
24 was first injured, and this includes his pension of twenty
25 five dollars a month. He goes on to say, " I also asked
26 for training in some other line of work, but was refused.
27 I had some training as a bookkeeper but not enough to ob-
28 tain a position in that line. I thought it reasonable to
29 ask for more training in this line but evidently the
30 Board thought otherwise." He states if his wife was not



1 working he could not exist on his earnings.

2 We don't know much about his accident, but
3 we hear he was refused retraining as a bookkeeper. Un-
4 fortunately we really have not any facts to go on, we have
5 no claim number. Have you any recollection Mr. Kerr?

6 MR. KERR: I have not, Mr. Guthrie, but if
7 Mr. McKinstry would contact me I would be delighted to
8 have his file reviewed, and do anything we could for him
9 in the retraining field. We would be delighted to look
10 at it.

11 THE COMMISSIONER: Is this the result of the
12 fact he hasn't gone through review and on to appeal. I
13 take it that is it, Mr. Kerr?

14 MR. KERR: I don't know what his problem is,
15 sir, except he has been refused training.

16 THE COMMISSIONER: Do you review cases that
17 have gone on right through, like Mr. Pifer's?

18 MR. KERR: I don't personally, sir.

19 THE COMMISSIONER: Will the Board accept
20 cases?

21 MR. KERR: On the appeal procedures, yes.

22 THE COMMISSIONER: After the appeal procedure
23 is finished?

24 MR. KERR: I don't know if this man has gone
25 through the appeal procedure, sir.

26 MR. GUTHRIE: We might advise Mr. McKinstry
27 that he could take the matter up with Mr. Kerr.

28 MR. KERR: Whatever is your desire.

29 MR. GUTHRIE: There doesn't seem much else
30 we can do for him.



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1 THE COMMISSIONER: Well, no, but I wonder
2 if -- I suppose there isn't much you can tell him. You
3 are now down to Rice are you?

4 MR. GUTHRIE: Mr. Morton I will refer to
5 briefly, Dr. Fee and Mr. Barker gave us the particulars
6 of that claim last week, and I don't think we need read
7 the brief.

8 Pifer we have dealt with, Neptune Meters
9 was read into the record two weeks ago, and Pollett we
10 have dealt with this morning.

11 Mr. Mel Rice of Sault Ste. Marie, submitted
12 a brief on September 29th, 1966. It reads:

13 "I would like to present a brief to you on
14 the Compensation Act particularly Articles
15 40, 41 and 42. In order to do this in the
16 best way I know how, I will have to use my
17 case although this involves many more people
18 than just myself.

19 "On September 8th, 1966, I was examined by
20 Dr. Hogarth from the Compensation Board. We
21 had quite a lengthy discussion about perma-
22 nent loss of wages. It is with his sugges-
23 tion and challenge that I am writing this.
24 He told me of your Commission and its pur-
25 pose and stated, 'if you don't like the
26 Compensation Act as it now reads, change it'.
27 I have a large permanent loss of wages which
28 he agrees does not seem fair, but which the
29 Board cannot do a thing about as the present
30 law reads. Even if this requested change



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1 does not help me, perhaps it will protect
2 workers of the future who get involved in
3 similar circumstances.

4 "On January 14th, 1958, I was injured at
5 work. I spent a short time in the hospital
6 and at home and returned to work. As time
7 progressed, my injury became worse. Approx-
8 imately two years later I started having
9 operations, after each one, I returned to
10 work."

11 He goes on to say, "in 1962," and this was
12 four years later, "my knee was fused. Upon
13 my return to work the company said I could
14 no longer do my work due to my disability.
15 This I was forced to accept and take a les-
16 ser job. My loss of wages was great between
17 then and 1961, but not so great between then
18 and 1958.

19 "In 1961 my average wage was two hundred and
20 twenty-seven dollars per week. My average
21 wage in 1958 as previous to the accident
22 was one hundred and fifteen dollars per
23 week. The wages on the lesser job in 1958
24 was eighty-five dollars per week. On this
25 same job in 1962 was one hundred and sixty
26 cents per week. My original job was the
27 highest paid job in the plant where I work.
28 "The Compensation Act now is interpreted
29 loss of wages can be paid on a temporary
30 disability but not on a permanent disability.



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1 In other words, if I have take a lesser job
2 temporarily, the Compensation Act will pay
3 me seventy-five percent of my loss of wages,
4 but if I have to take a lesser job on a per-
5 manent basis, I am not entitled to any loss
6 of wages. I am only entitled to my clinical
7 rating disability which in my case is twenty
8 percent of three thousand seven hundred and
9 fifty dollars or sixty-two dollars and fifty
10 cents per month.

11 "My understanding of Compensation is that it
12 is to provide the worker with funds to see
13 that he can maintain to a degree a way of
14 life that he is able to earn when an injury
15 occurs. This should hold true just as much
16 on a permanent basis as a temporary basis.

17 "Over the past few years, I have talked
18 with quite a few different people at the
19 Compensation Board, Rehabilitation Centre,
20 and my personal physician. They all agree
21 morally this isn't right but their hands
22 are tied by these articles to do any dif-
23 ferent. Therefore, I would like to request
24 a change in this section of the law to pro-
25 tect a permanently injured worker against
26 loss of wages to the amount stated by the
27 Compensation Act."

28 THE COMMISSIONER: This is not the same case
29 as the other?

30 MR. GUTHRIE: I thought it was going to be



1 as I began it.

2 THE COMMISSIONER: Here is a man who has
3 an injury and takes a lesser job. If he has a temporary
4 disability they will pay him the difference between, or
5 pay his employer to bring him from the pay he gets, when
6 he goes back to work, up to his regular pay.

7 MR. GUTHRIE: They will pay him seventy-five
8 percent of his wage loss.

9 THE COMMISSIONER: And then the time comes
10 to turn it into a permanent loss. It is not based on
11 what he was earning at the time he suffered the injury,
12 but on his subsequent earnings.

13 MR. ESTEY: On his capacity to work. He
14 is objecting to the standpoint that "41" doesn't apply
15 to 40 and 42; "41" being temporary and not the difference
16 in actual loss.

17 THE COMMISSIONER: This isn't as simple as
18 that. Just let me renew the facts here again. He had
19 an accident in 1958 and the injury gradually became worse.
20 He was told he could no longer do his work and was forced
21 to accept and do a lesser job. He worked on the lesser
22 job. Then eventually he had to give up work, didn't he?

23 MR. GUTHRIE: He never says that.

24 THE COMMISSIONER: He never gave up work?

25 MR. ESTEY: No, he continued at the lower
26 level.

27 THE COMMISSIONER: They eventually put him
28 on a permanent basis?

29 MR. GUTHRIE: A permanent partial disability
30 pension, based on his rate on the basis of his physical



1 impairment.

2 MR. ESTEY: It wouldn't make any difference
3 to the job at that time. That is his complaint. He says,
4 "if I worked under "41" that would be the base on my re-
5 turn, but now with a permanent disability it is on my
6 physical incapacity it is based. "

7 THE COMMISSIONER: In other words, based on
8 his physical incapacity, but you think that his physical
9 capacity would bear some relation to the difference be-
10 tween what he is earning on the two occasions?

11 MR. ESTEY: I am surprised now that he has
12 explained it to us that it doesn't happen more often.
13 Under Section 40 he goes to three-quarters of his average
14 weekly earnings for temporary total. Under temporary
15 partial you take seventy-five percent of his actual loss.
16 Then he moved to permanent disability and you go back to
17 Section 40, temporary partial and seventy-five percent of
18 his partial earnings, and he said, "I do better under the
19 temporary total because the actual economic loss is the
20 base of my compensation, but if you put me on three-
21 quarters it is three-quarters of what I am earning." It
22 is a wonder it hasn't happened more often.

23 THE COMMISSIONER: Have you any comment,
24 Mr. Kerr?

25 MR. KERR: What the man says is true in
26 this case. I assume he said twenty percent of a fixed
27 thing and that would be taken right from our rate sched-
28 ules of impairment. He could have a wage loss on twenty
29 percent disability.

30 THE COMMISSIONER: Now the other case you



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1 deal with, where the man has a permanent disability and
2 later an aggravation, you are entitled to assess it on
3 the basis of what his original salary was. In this case,
4 why wouldn't the same thing apply? It is a case of chang-
5 ing a permanent disability account, isn't it? It is the
6 case of assessing it for the first time, so you base it
7 on the rate schedule?

8 MR. KERR: We also have cases on the rate
9 schedule where a man makes more than he did before the
10 accident. The man who is able to make more than he did
11 before the accident would still have received the twenty
12 percent. We have cases where a man can make more rather
13 than less.

14 MR. GUTHRIE: There is a brief in the form
15 of a letter from Albert V. Walker, of Oshawa, who is a
16 member of the Provincial Legislature, dealing with light
17 work, Mr. Commissioner. It reads:

18 "I would appreciate very much the oppor-
19 tunity of placing before you for consider-
20 ation during your review of the Workmen's
21 Compensation Act, one of the more difficult
22 problems with which I have been confronted
23 in regard to Workmen's Compensation claims.

24 "One of the most difficult situations is
25 the problem of the worker who is considered
26 by the medical authorities of the Board to
27 be 'fit for light work', his compensation
28 payments are considerably reduced and he is
29 literally sent out into the world to find a
30 light job. It seems that this situation



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1 usually occurs in the smaller industry
2 where every workman is expected to carry
3 his share of the load and pay for himself.
4 This small industry just doesn't have any
5 light work jobs and there is no regulation
6 under the Workmen's Compensation Act which
7 can force the employer to find light work
8 for his injured employee, even though the
9 unfortunate employee may have been injured
10 by an accident which was no fault of his
11 own.

12 "This is an area which can cause grave
13 financial difficulties for the worker. The
14 rehabilitation officers of the Workmen's
15 Compensation Board try to assist this
16 classification of worker to secure employ-
17 ment, but there are few employers who will
18 originally hire a man who is classified as
19 only able to do light work.

20 "The question may well be asked, if the em-
21 ployee is injured, especially if it be
22 through no fault of his own, why shouldn't
23 the employer be responsible for the welfare
24 of his employee, either through full com-
25 pensation payments until completely recov-
26 ered, or the provision of a suitable light
27 work job until he is medically fit to
28 return to his original work?

29 "I have discussed this problem at length
30 with Board officials on various occasions



1 and they recognize these situations as
2 being very complex. Certainly this type
3 of situation can cause considerable hard-
4 ship to the worker and his family who find
5 themselves in an embarrassing financial
6 position. I fully realize there is no
7 easy solution to the problem which I have
8 presented."

9 That also, Mr. Commissioner, is a matter
10 we have had discussed on many occasions in these proceed-
11 ings.

12 That ends the individual submissions that
13 were not presented by the applicants in person.

14 MR. ESTEY: We have one more individual
15 brief. Mr. Ostrowski, of Huntsville, was before the
16 Commission previously in connection with medical matters.
17 He has filed today Part II of his submission. Mr. Ostrow-
18 ski is present this afternoon, Mr. Commissioner, and is
19 desirous of presenting this supplementary brief to the
20 Royal Commission.

21 MR. JAN OSTROWSKI: I would like to express
22 my thanks for permission to appear and to present other
23 remarks additionally to you. This is in addition to the
24 brief presented on the 26th.

25 The first point is under the heading,
26 "right of choice of physician." I am sorry for the mis-
27 take made in grammar but it was typed recently and I have
28 corrected it only on my copy. This, in most of the cases,
29 is a practical necessity accepted by the Board. Never-
30 theless the Board retain full right to determine who



1 shall provide the treatment to those workmen, who are the
2 Board's responsibility.

3 This right is exercised unilaterally not
4 only in providing first aid, whenever feasible, but par-
5 ticularly whenever the necessity of specialized medical
6 services occur. It would be to the great advantage of
7 both parties, both the Board and injured workman, if the
8 workman and his family doctor would have the choice of
9 specialists. This will give more confidence of receiving
10 treatment on an equal basis with other patients, and will
11 also eliminate the Board from all complaints for provid-
12 ing unsatisfactory service.

13 As I mentioned in the last sentence of to-
14 day's brief, these remarks are only examples of our ex-
15 perience in dealing with the Workmen's Compensation Board,
16 and the disaster which fell on Mrs. Ostrowski -- if we
17 had had the choice of a physician. I don't want to go
18 into details but they are apparently in the copy of the
19 appeal which is annexed to the brief.

20 THE COMMISSIONER: Now, I understand the
21 practice is that you are allowed the choice of your own
22 physician and that that physician is allowed to carry
23 out the treatment up to a point, in any event?

24 MR. OSTROWSKI: Yes.

25 THE COMMISSIONER: It is the practice of
26 the Board to let him carry out the treatment?

27 MR. OSTROWSKI: Yes, if it is not serious,
28 but if a specialist's service is required --

29 THE COMMISSIONER: Then they give you a
30 choice of two or three and you are restricted to those?



1 MR. OSTROWSKI: Never. We are always
2 assigned one doctor. In the first accident in 1952, and
3 in 1954 Dr. A.W. White performed the surgery. My wife
4 was directed straight to Dr. White and no one was even
5 thinking some other doctor could do it. We have no com-
6 plaint about Dr. White's medical performance, but when
7 the occurrence was in 1963, Mrs. Ostrowski was also re-
8 ferred straight to Dr. Lotto. No mention of any doctor
9 or any choice. You just go to Dr. Lotto and Dr. Lotto
10 will observe and operate eventually. There is no mention
11 in any letter we received, in any correspondence, to say
12 if you wish another doctor you can ask the Compensation
13 Board for permission.

14 The second point is dealing with lack of
15 rehabilitation for injured female workers. The Workmen's
16 Compensation Board operates a large, modern rehabilitation
17 centre at Downsview. Despite the fact that women compose
18 a very substantial part of the labour force in Canada,
19 there is no rehabilitation centre for injured women.
20 Downsview cares only for injured male workers. There is
21 also no vocational and retraining unit for partly dis-
22 abled workmen, men and women, which could provide them
23 with new skills according to their post-accident possib-
24 ilities. It is a fact that many many complications arise
25 from that simple fact, that a workman is released too early,
26 or left by himself to heal after the surgery. Something
27 should be established fit for to deal with special kinds
28 of injuries.

29 The third point is the stability of pen-
30 sions. The pension is based on the average wages at the



1 time of the accident. The pension of permanently disabled
2 workmen remains one of the existing injustices. Although
3 some of the most conspicuous examples of injustice to the
4 old timers has been eliminated by most recent amendments
5 and regulations, nevertheless the principle remains.
6 There is no reason or necessity in present times, when
7 nation's aim is to achieve maximum of social justice and
8 security, to continue this injustice. Compensation for
9 permanently disabled should be flexible in accordance
10 with constantly rising costs of living, wages, allowances
11 etc. Why those who suffered more should be left out of
12 benefits enjoyed by the rest of the society? I think
13 why is it workmen should be in a worse position than
14 someone likely enough to reach the ripe old age which
15 means he gets his pension increased by the rising cost
16 of living, but the workmen will be left like in my wife's
17 case, with the complications in 1963, and she will get
18 still five dollars and twenty-five cents monthly pension.

19 THE COMMISSIONER: You are not suggesting,
20 or are you suggesting that today's employers should be
21 made responsible for yesterday's injury, or do you feel
22 it should come out of the consolidated fund?

23 MR. OSTROWSKI: I am not suggesting the
24 employer would be responsible. But there are many ways
25 that such an injustice could be dealt with and I think
26 that should be one of the main considerations for every-
27 one interested.

28 Another point, No. 4, is the bureaucracy.
29 The attached copy of the appeal illustrates the bureau-
30 cracy and other deficiencies in functioning of the Board.



1 The apparent politeness and smoothness in dealing with
2 parties conceal very often serious deficiencies, more
3 serious still when the health, well-being, future and pos-
4 sibly the life of the workman is at stake. It must be
5 really wrong when it takes four days to get an injured
6 workman to the operating room, while proper treatment re-
7 quires the surgery to be performed within twenty-four hours.

8 THE COMMISSIONER: That is a general state-
9 ment that you make.

10 MR. OSTROWSKI: I can prove that case Your
11 Lordship.

12 THE COMMISSIONER: We all know the difficulty
13 of getting into hospitals today, but in any case of an em-
14 ergency, is there any place unless very far removed, in
15 the farther parts of Canada, where you can't get to hos-
16 pital in twenty-four hours?

17 MR. OSTROWSKI: Your Lordship I would explain
18 what we have in mind, with your permission. The accident
19 occurred in early afternoon hours of December 11th, 1952.
20 By the time when Dr. Gallagher arrived to take Mrs. Os-
21 trowski to the hospital, for x-ray, and decided the case
22 too complicated for the Huntsville hospital, he got in
23 touch with the Compensation Board. There was no one to
24 say if Mrs. Ostrowski was under compensation or not, so
25 they were not dealing until the next morning. The next
26 morning several calls were made. These calls finally ended
27 with the statement that yes, Mrs. Ostrowski is under Com-
28 pensation Board and we are sending ambulance to take her
29 to Toronto.

30 The ambulance came next day, but not from



1 Toronto. Local ambulance take her by order of the Com-
2 pensation Board to Toronto. Already this is forty-eight
3 hours. Two days in hospital -- there was room in hospital
4 -- but two days elapsed between the admittance to the hos-
5 pital and the operation itself. Altogether four days. I
6 can prove that.

7 THE COMMISSIONER: As far as those two days
8 in the hospital were concerned, I suppose it depended up-
9 on a surgeon to do the operation?

10 MR. OSTROWSKI: Surgeon right on the spot.
11 Maybe he was busy, I can't tell you that, but it was four
12 days instead of twenty-four hours, and I don't think there
13 is any reason in case of emergency when local doctor phones
14 Compensation Board to refuse to send ambulance, because
15 there is no such a great amount of money involved, that
16 workman or his employer would not be responsible for it.
17 But because we have no files, because I don't know if
18 somebody insured, that takes too much responsibility on
19 Compensation Board. I think it is an example of bureau-
20 cracy.

21 THE COMMISSIONER: This is one of the things
22 we heard this morning, the complaint that the Board accepts
23 these medical bills without checking to see whether they
24 are responsible for them, because they are of relatively
25 small amounts. The objection to their course of action
26 is by so doing they more or less admit responsibility, and
27 consequently claims are made and they are in the position
28 of having admitted the responsibility originally.

29 MR. OSTROWSKI: I don't know that is admit-
30 ting responsibility, Your Lordship.



1 THE COMMISSIONER: I don't either, but that
2 was an objection.

3 MR. OSTROWSKI: In our case it was entirely
4 different. The next point is "C" when there is evident
5 lack of control over the quality of medical services pro-
6 vided by the Board.

7 THE COMMISSIONER: Contrary to the various
8 things we have heard, I would have thought the type of
9 medical services provided by the Board is of a pretty high
10 order. They provide the best and most qualified special-
11 ists in the field. They have a pretty good working ar-
12 rangement with the medical profession. There is little
13 criticism from the medical profession that they do not
14 use their services to the best advantage. What is the
15 basis for this statement, Mr. Ostrowski?

16 MR. OSTROWSKI: With your permission, Your
17 Lordship, I will read part of Mrs. Ostrowski's appeal,
18 which is attached to the brief,--because that is what sub-
19 stantiated our claim: "This operation was performed in
20 October 1963. This operation made me completely crippled,
21 unable to move even a short distance with the help of two
22 canes. Furthermore, after almost six months in hospitals
23 I was discharged on March 10th, 1964, with non-united
24 osteotomy, as fit to gradually resume my regular work and
25 assurance that I will be completely fit to my regular work,
26 as a cook and other duties for the summer of 1964.

27 "During the treatment in hospital I com-
28 plained many times to Dr. Lotto about my condition and de-
29 formities created by his operation and requested several
30 times for another surgery to correct the deformities. All



1 my complaints and requests were entirely ignored and even
2 ridiculed, by assuring me that "everything is alright"
3 that all deformities exist in my mind or imagination, that
4 they will disappear etc. It has to be made clear, that
5 during the period between September 29th, 1963 and March
6 10th, 1964, I was seen by several other doctors, Dr. Wright,
7 Wylie, Crawford and also by Dr. White, all highly qualified
8 specialists. Each one, even by looking at my hip, was
9 fully aware of all deformities created by Dr. Lotto's
10 surgery, but not one of them tried to warn me about my
11 condition, do anything about them or even suggest consul-
12 tation or further surgical treatment.

13 "This fact compelled me to look for opinion
14 and advice in New York. Only due to my own endeavours I
15 have discovered the truth about my condition, so carefully
16 concealed for more than seven months.

17 "I am aware now, that the McMurray osteotomy
18 may not always (fifteen - twenty percent) bring beneficial
19 results, and some unlucky patients have to accept lack of
20 improvement. I am also aware, that this surgery if pro-
21 perly performed never brings worsening of the patient
22 condition, never is followed by these kind of deformities.
23 The truth I had to face was that instead of help and rel-
24 ief, I was sent home by Dr. Lotto, first with non-united
25 osteotomy. Secondly, with the spline loose in the greater
26 trochanter. Thirdly, with movement on the site of the
27 osteotomy. Fourthly, ninety degrees varus deformity.
28 Fifthly, forty-five degrees external rotation deformity
29 of the distal fragment of the femur. Sixthly, thirty de-
30 grees fixed flexion contracture deformity. Seventhly,



1 five cm. shortening of my left leg. Eighthly, limitation
2 of all movements of my left leg. Ninthly, increasing pain
3 in lumbar region and right leg.

4 "On May 29th, 1964, I was advised about an
5 appointment with Dr. Lotto, arranged for June 29th, 1964.
6 The same day I mailed to the Board the following letter:

7 "Today I received your letter of May 27th,
8 1964 with a transportation warrant dated
9 May 28th attached.

10 "This is to inform you that I do not wish to
11 have any further medical attention from Dr.
12 W.N. Lotto. I have no confidence in him and
13 therefore there is no point to report on
14 June 29th.

15 "I do not feel it will be proper to discuss
16 in strictly routine correspondence the rea-
17 sons which led me to this unpleasant con-
18 clusion, but I will take the first approp-
19 riate opportunity to present them to the
20 authorities of the Workmen's Compensation
21 Board. Physical condition of my injury are
22 now much worse than before the operation of
23 October 1st, 1963, and I am unable to travel
24 alone. Unfortunately the date of June 29th
25 is too late for my husband to drive or to
26 accompany me to Toronto. The tourist season
27 commences on June 26th, and therefore I ask
28 for an appointment at an earlier date.

29 "I am returning the attached transportation
30 warrant.



"Despite my declaration of readiness to disclose in appropriate way the reasons for this unpleasant decision, I was never called or asked about it by any official of the W.C.B., and not even examined. Instead, following some behind the scene manipulation, my husband received from Dr. Harris the following letter:

"I have now heard from the Compensation Board that they are willing to have me look after your wife.

"Would you please let me know when you would like her to come down to have the surgery done. If you wish to leave this until after the summer season, I should put her name on the admission list now, as reservations are running about four months behind. If you would prefer to go ahead sooner, we can arrange to declare her an 'urgent' case, and try to get her in within the next few weeks. "

"Following my husband's personal intervention with the Board on June 16th, 1964, the assignment of my case to Dr. Harris has been confirmed -- still without any medical examination and without any interest from the Board regarding the event which led to the necessity of corrective surgery.

"Corrective surgery performed by Dr. W.R. Harris on July 15th, 1964, was only partly successful, reducing the shortening of my left leg to thirty mm.,



1 external rotation of the shaft to fifteen degrees, restor-
2 ing the valgus position with abduction deformity and leav-
3 ing the fixed flexion deformity at thirty degrees unchanged."

4 THE COMMISSIONER: Now, Mr. Ostrowski, you
5 go on another two paragraphs. Your complaint is that you
6 did not get the proper medical attention. That the medi-
7 cal attention given you wasn't successful. You don't feel
8 these doctors were competent.

9 MR. OSTROWSKI: Your Lordship, I am com-
10 plaining that the Workmen's Compensation Board do not pay
11 any attention to what kind of medical service is given by
12 the doctors provided by them. They do not even want to
13 discuss the question. They just drop the file and refer
14 to the medical department, to the other department about
15 use and so on.

16 THE COMMISSIONER: If there were none known
17 when she left the hospital, there would be a substantial
18 time before they found out there would be a deformity or
19 not.

20 MR. OSTROWSKI: The deformity was present
21 from the first day of her operation, when she came from
22 the operating table all the deformities were present.

23 THE COMMISSIONER: I think we will adjourn
24 for a few minutes and hear the rest of the submission
25 after that time.

26 *****

27 --- The hearing recessed for
28 ten minutes.

29 *****
30



1 THE COMMISSIONER: Now, Mr. Ostrowski, we
2 are going to your number "D"?

3 MR. OSTROWSKI: When the Board, making a
4 lump sum payment, advises that this is being done because
5 the percentage of permanent disability is not expected to
6 increase, and then in following few months a serious sur-
7 gery is necessary.

8 THE COMMISSIONER: I thought the Board never
9 made a lump sum settlement when the disability was over
10 ten percent?

11 MR. OSTROWSKI: I was advised when the pen-
12 sion is made below fifteen dollars and when there is no
13 expectation of increasing the condition. That was in
14 1962, and the next three or four or five months it was
15 surgery was necessary. I think something is wrong in
16 medical department as they knew perfectly all we know,
17 from a study of a little bit of medical books that it was
18 wrong. It could not develop otherwise after the surgery
19 and what happened and diagnosis, but nothing about this
20 fact and answering this letter and raising a fellow's
21 hopes and everything, which is all right with me as I can
22 go ahead and work. Something is wrong with Compensation
23 Board office work or medical department, and I think it
24 is also something wrong when it takes about ten weeks for
25 appointment of medical examination. From April to July
26 2nd, 1963. Also it is wrong when it takes five weeks,
27 several letters and phone calls and personal intervention
28 to obtain permission to get a pair of orthopaedic shoes.
29 These are only a few examples of our experience in dealing
30 with the Workmen's Compensation Board.



1 We realize, Your Lordship, we are not going
2 to gain anything. That is not our aim. We responded
3 only to the public appeal to get all the facts of the
4 Workmen's Compensation Board. We do it in the best faith.
5 It may be useful in one way or another. I heard today
6 also the discussion of the necessity of the action under
7 Section 42, in the way of permitting the workman to have,
8 who was previously partly disabled and to keep working,
9 and then his disability due to working, or due to other
10 reasons, increases and that he should be paid for work of
11 the further disability at the time of increased disability
12 -- if I am clear in expressing that.

13 In our particular case the original accident
14 happened in 1952. The pay was only twelve hundred dollars
15 a year. Then, in the meantime, the pays increased accor-
16 ding to the minimum required. Mrs. Ostrowski was kept
17 working because with five to twenty-five percent she
18 should not stop working. She was never told to avoid
19 certain kind of work. Then she paid for eleven years and
20 carries still the insurance of her premium. Then worsen-
21 ing occurred and the operation is performed and total dis-
22 abled or the total now sixty-five percent disabled. What
23 should be the base? The person who is paying in for that
24 for eleven or twelve years, the compensation premium,
25 should be paid according to the pays of 1952 or according
26 to 1966 when the disability occurs or increases due to
27 several reasons, but only from the original accident?

28 THE COMMISSIONER: When you say she paid
29 the additional premium, you had brought yourselves under
30 the Act?



1 MR. OSTROWSKI: Yes, sir.

2 THE COMMISSIONER: You and your wife?

3 MR. OSTROWSKI: Yes, both partners and some
4 of them dropped from the business and only the two remain.
5 So I don't think that it is my duty, or my job to present
6 any recommendation. Your Lordship would know best what
7 to do and the Royal Commission will take notice of all the
8 remarks.

9 THE COMMISSIONER: As you say, Mr. Ostrowski,
10 and I believe it to be true, your appeal has gone to the
11 full gamut to the Board, and there is nothing I can do;
12 but you appeared here as a public spirited citizen to try
13 and correct deficiencies in the administration and the
14 Act yourself. I accept your statement that you came in
15 that manner and I appreciate it.

16 MR. OSTROWSKI: I only ask that the same
17 thing that happened to us should not happen to another
18 workman.

19 THE COMMISSIONER: Thank you for this and
20 for your previous submission.

21 MR. ESTEY: Mr. Osler...

22 MR. OSLER: Mr. Commissioner, this I think
23 is the last section of the compensation brief and it is
24 dealing in rehabilitation of the injured employee. It
25 appears on Page 20 of the brief.

26 THE COMMISSIONER: Yes.

27 MR. OSLER: Perhaps if I read the brief
28 to start with, sir:

29 This company considers that rehabilitation
30 is humane and correct and it makes every endeavour to



1 rehabilitate a workman who meets with sickness or injury
2 whether it be industrial or non-industrial. The company
3 fully appreciates the good work done by the Board in its
4 rehabilitation program.

5 Through the co-operation of the Board with
6 many industries and with its advice and working closely
7 in conjunction with the medical authorities of the Board
8 and with private practitioners in the local industry, ap-
9 proved rehabilitation procedures have been established in
10 many industries and this company actively participates in
11 such a procedure.

12 It has been the experience of this company
13 that injured employees who actively co-operate in reha-
14 bilitation procedures generally progress more satisfac-
15 torily and rapidly toward recovery. Those who do not co-
16 operate or actively resist rehabilitation seriously retard
17 recovery. Apart from the general undesirability of delayed
18 recovery, it has a direct consequence on the burden borne
19 by industry. As pointed out in an earlier section of
20 these submissions, an injured employee on temporary total
21 disability compensation may be receiving an amount almost
22 as much as his net earnings prior to the injury. In the
23 case of an injured employee on temporary partial disability
24 who is being placed at work, there is also little if any
25 loss in net earnings. Such a situation actively encour-
26 ages malingering and resistance to rehabilitation for
27 human nature cannot be ignored.

28 THE COMMISSIONER: Wait a moment. You say
29 the injured employee on temporary total disability com-
30 pensation may be receiving an amount almost as much as



1 his net earnings and in the case of an injured employee on
2 temporary partial disability who is being placed at work,
3 there is also little if any loss in net earnings. If he
4 is back at work, or placed at work, how is there any mal-
5 ingering?

6 MR. OSLER: The situation that might occur
7 is that a man can be put on a light duty job, and instead
8 of progressing and rehabilitating himself to the extent he
9 can get back to his regular employment, he is inclined to
10 remain at the status quo. If I can give you an example.
11 If a man is a miner we may bring him back to light duty
12 and bring him back into the dry or the lamp room and shops,
13 and within what you would call light duty work. Instead of
14 progressing and getting back into the next step of light
15 work underground and then progressing back to his regular
16 operation, he --

17 THE COMMISSIONER: He prefers to stay on
18 the light work?

19 MR. OSLER: He makes no progress. For the
20 above reasons this company submits that where such approved
21 rehabilitation procedures have been established and it is
22 determined that a man refuses to co-operate in his re-
23 habilitation, his compensation for temporary total dis-
24 ability or temporary partial disability, as the case may
25 be, should be terminated or reduced and in no event should
26 an award of permanent partial disability be made.

27 This is the section we were severely criticized
28 for by the steel worker's presentation as being hard and
29 heartless. The situation, if we take them in their order,
30 temporary total disability. Now a man may be injured and



1 be off work. His doctor may say he has a bruised finger
2 or a bruised hand. His doctor may not give him a return
3 to work slip. Yet, obviously he could be back doing a
4 light duty job. Now our recommendation in that respect
5 would fall into the next part of the brief where we suggest
6 there should be some facility for the company to ask for
7 an independent examination of the workman, to see if he is
8 in fact totally disabled and not just a doctor saying,
9 "stay off a few days."

10 In a case like that, if a man does not go
11 back to work in a light duty job, then we believe his
12 compensation should be not carried on a full total dis-
13 ability level.

14 A man on a temporary partial disability if
15 he has again -- I am not suggesting the company is going
16 to be the judge -- should be an independent determination;
17 if the man is not co-operating with rehabilitation and
18 progressing back to full health when on temporary partial
19 disability, then again I believe the temporary partial
20 disability should be reduced. The final point there is
21 you will have a man on temporary partial disability, and
22 we have experienced in some cases where the man has con-
23 tinued on a light duty or modified employment, until such
24 time as the Board has come to a determination that there
25 is a permanent partial disability. We have a number of
26 cases where, if that award hadn't been made, the man is
27 quickly back to his original occupation. Particularly a
28 man working as a stope leader or driller on temporary
29 partial disability. It can't be straight coincidence that
30 having received an award for permanent partial disability



1 very shortly afterwards the man bids back into his original
2 job as a stope leader or driller or what have you, back to
3 his original job. We believe to a certain extent the man
4 has calculated his chances, and not only obtained his per-
5 manent partial disability pension, but has gone back and
6 been able to earn exactly what he was earning before the
7 accident. We get to this problem, sir, in a section of
8 our brief we dealt with earlier, to distinguish between
9 a man who has for instance disfigurement, or something
10 like that, when working on a particular job may cause him
11 no disability. It is conceivable if he left our employ-
12 ment and went somewhere else that there would be, perhaps,
13 some disability. I must admit that problem could arise,
14 but our paragraph on Page 21 there, sir, we feel there
15 should be a policy to have an independent determination
16 that if a man is not co-operating with rehabilitation,
17 then his compensation on total temporary disability should
18 be reduced. That is in the case where he is not going
19 back to work but is on temporary disability and during
20 the rehabilitation program he is not co-operating and we
21 should have an independent determination. During the
22 course of the rehabilitation program until determined that
23 rehabilitation cannot succeed, an award for permanent
24 partial disability should not be made.

25 I think at this time, sir --

26 THE COMMISSIONER: I am not following you
27 all the way on this. Supposing a man has some injury to
28 his leg, or something, and comes up with a limp with his
29 bad leg, or it gives him trouble, and he is not the kind
30 to quit and he goes back to his regular job. Would he



1 not be entitled -- does your argument go so far he wouldn't
2 be entitled to any permanent partial disability because he
3 is able to go back to work?

4 MR. OSLER: Well, sir, you take an example
5 such as you have just given and it is hard to say if a man
6 has a permanent limp; or as a result of an accident has
7 come up with something, dismemberment, disfigurement which
8 is permanent; I agree in that case you are dealing with a
9 question where there is undoubtedly disability of some sort.

10 THE COMMISSIONER: There are lots of old
11 soldiers going around with pensionable disabilities who
12 are able to re-establish themselves and work.

13 MR. OSLER: That is quite true and may re-
14 establish themselves at work in a job, and so long as they
15 work in that job they have, in fact, no disability.

16 THE COMMISSIONER: There is the other thing,
17 of course, with a partial disability there is no saying
18 the time won't come when this man won't be able to carry
19 on and do his job.

20 MR. OSLER: On the other hand, in this type
21 of instance you are covered in subsequent disabilities.

22 THE COMMISSIONER: I am asking you if you
23 feel they should be going to the extent that you go in
24 your second last paragraph, where you determine the man
25 refuses to co-operate. That is not the case, in the case
26 of a man where he has rehabilitated himself, if he has per-
27 manent disability.

28 MR. OSLER: Oh yes --

29 THE COMMISSIONER: On this first one you
30 mentioned here, haven't you got the power now under "22"



1 "(1)"to demand he submit to medical examination?

2 MR. OSLER: That is true enough, sir, but
3 there is that provision in the Act that we request a man
4 report to a doctor of our choosing, and he examines the
5 man. If a conflict of medical evidence occurs it is re-
6 ferred to a medical referee. We are dealing here, sir,
7 with a type of case we think is appropriate which is a
8 man on total temporary disability who is off for ten days
9 or two weeks. You don't^{go}/through that procedure in that
10 period of time. The man is off with a bruised hand or
11 finger.

12 THE COMMISSIONER: That is what you are sug-
13 gesting?

14 MR. OSLER: No, sir. I am suggesting in the
15 final paragraph while a procedure is available under Sec-
16 tions 22 and 23 for determination of the condition of the
17 workman, it is generally too lengthy for such cases and
18 it is suggested that at the request of the employer an
19 immediate determination by a medical referee, of the in-
20 jured employee's ability to go to work, be obtained.

21 I am looking for a direct reference to a
22 referee, rather than have the company doctor examine the
23 man, go through that procedure and then go to a third man
24 as a referee. The employer should be able to ask the
25 Board to direct the employee to a doctor to determine
26 whether, in fact, he is totally disabled. This is what
27 it amounts to, or could that man be back being rehabilitated
28 in his job. This could be done relatively easily.

29 I understand, although there is nothing in
30 the Act to make such provision, I am given to understand,



1 that the Board have acted somewhat along that line. In
2 other words at the request of an employer they have had
3 the man examined by a doctor, to determine whether the
4 disability is as indicated by the employee's own doctor,
5 but there is nothing in the Act which covers that situ-
6 ation.

7 THE COMMISSIONER: I can understand that
8 some such thing might be desirable in a case where the
9 disability appears to go on too long, but this is a dis-
10 ability that lasts a week or ten days. A great number of
11 these things will mount up it seems to me. I question
12 the desirability of getting into a donnybrook with a man
13 or his doctor at that stage whether he should go back two
14 days earlier or not.

15 MR. OSLER: The problem, of course, is the
16 short term total disability is quite a sizeable amount of
17 cost. Quite a sizeable amount of cost in the ten day to
18 two week range. Isn't that correct?

19 This is one of our major areas of difficulty,
20 sir, we have men who no doubt take the position and will,
21 "until my doctor tells me I can go back to regular work
22 I am not going back." This isn't taking advantage of a
23 situation, I admit. A man is going back to a job which
24 is not going to be his regular job. It will be a reha-
25 bilitation scheme. It will favour him in the area in
26 which he has been injured, but I think the man has an
27 obligation to go back and not to magnify his injuries or
28 damages.

29 THE COMMISSIONER: Well, if there had been
30 gross abuse at least it would seem your request is reason-



1 able. On the other hand I don't want the workers to be
2 harassed every time the Board puts them on compensation,
3 with the Board accepting the doctor's evidence. I suppose
4 among the medical profession you can get people respon-
5 sible and others who aren't.

6 MR. OSLER: I think, as pointed out earlier
7 as one of the problems, it has to be recognized as a pro-
8 blem that in the northern communities there is a patient-
9 doctor relationship, and a doctor has to live in that com-
10 munity and the doctor could find in a great many cases,
11 he could find great difficulty. I would think, sir, with
12 the knowledge that I may be a little out of line here, I
13 would think that the knowledge that there is a doctor-
14 patient relationship may be subject to independent scrutiny,
15 it may have some effect on that.

16 THE COMMISSIONER: As it stands at the pre-
17 sent time, the Board may direct that at any time.

18 MR. OSLER: Presumably the Board may direct
19 it at any time.

20 THE COMMISSIONER: But you would like the
21 Board, at the request of the employer, to direct it, or
22 of its own volition?

23 MR. OSLER: Yes, I certainly think it is
24 permissible to leave it in the realm of discretion of the
25 Board. I would like, actually, to have asked that it be
26 done and the Board have a look at it. It would be the
27 most satisfactory solution, but it might be the next best
28 thing to leave it to the Board's discretion.

29 THE COMMISSIONER: All right.

30 MR. OSLER: I have really dealt with the



1 last paragraph of our written submission, that is asking
2 an amendment to Sections 22 and 23. I would like to point
3 out, sir, I have had an opportunity throughout the hear-
4 ings of speaking to Mr. Kerr and other members of the
5 Workmen's Compensation Board, and I am advised the use of
6 the word "referee" in our brief here, insofar as the
7 Board is concerned, is probably a little different from
8 the person I am envisaging. They envisage a referee as
9 a senior member of the Board itself. I was not referring
10 to that sort of a referee as a senior member of the Board,
11 whether you call him a referee or arbitor.

12 THE COMMISSIONER: They consider the referee
13 as a senior member of the medical profession?

14 MR. OSLER: I think it is of the Board it-
15 self. Mr. Kerr might correct me. They see him as a sen-
16 ior person in the Board, but we were looking to a situation
17 that if such a person were appointed in Sudbury, the Board
18 would appoint a doctor, a local doctor who would make this
19 examination, rather than a doctor the Board normally uses
20 as a referee. Perhaps Mr. Kerr --

21 THE COMMISSIONER: Why use the term "referee"
22 at all, if you want a further examination by another me-
23 dical man?

24 MR. OSLER: I was trying to distinguish be-
25 tween the present provisions of Section 22 that a company
26 be asked to have their doctor appointed, and then if a
27 difference of opinion occurs, it goes to a referee. I
28 am asking that the doctor be one of the Board's choosing,
29 not the company's.

30 THE COMMISSIONER: A further examination by



1 a medical man of the Board's choice?

2 MR. OSLER: Yes, sir.

3 I would like to cover one point today, sir.
4 In order to correct what might be a misapprehension by
5 something I said the last time I appeared.

6 This is in connection with the reducing of
7 an employee's compensation to fifty percent, and I think
8 I made the statement that we had found no examples of
9 that, and may have given the impression this was of the
10 Board's own volition, and I did not mean to suggest that.
11 The Board, of course, acts on the advice of the medical
12 reports received, and where they have a medical report
13 indicating a man is not fit to work, the Board acts accor-
14 dingly; and I want to correct any impression I gave that
15 the Board are not keeping the people on disability when
16 that is not the case. They follow, obviously, the advice
17 of doctors to make their determination.

18 I talked, sir, of the rehabilitation pro-
19 gramme of the company. I think to put it in its correct
20 light, I should give you some information as to the safety
21 scheme and program of the company. Mr. Young, who is with
22 me, is the superintendent of safety of the company. He
23 has an office and staff and in addition to that he has
24 some eighteen safety engineers. Two people, a technician
25 and another engineer doing special checks on specific
26 features of our operation.

27 These men and Mr. Young's department totally
28 are responsible and do develop programmes of safety, in-
29 volving safety instructions, demonstrations, consultation
30 with the production people. They inspect all machinery,



1 conditions and practices. In other words they are taking
2 in not only the physical equipment but also the human el-
3 ement.

4 They, of course, as we expect any man of our
5 management to do, immediately stop, or cause any machinery,
6 ways or anything else to be stopped, if there is any ques-
7 tion of unsafety, and they prevent and stop unsafe pra-
8 ctices. They are responsible for accident prevention,
9 including health. They operate and run meetings once a
10 month with the local superintendent of the particular
11 operation, whereby all levels of management down to the
12 first level are present, dealing with safety and subjects
13 of programmes and so on. There is instituted and they
14 are required to record on-job safety instructions. Each
15 individual last member of management must carry through
16 once a week on the job demonstrations of the correct ways
17 and means of carrying out various efforts. He must check
18 for the individuals he has instructed so all his employees
19 will receive these various features of instruction. Now,
20 over the course of that time, this is repetitive, he will
21 be instructed on the safe way of drilling. No drilling
22 in missed holes, no drillings that will cause dangerous
23 fractures and so on. It is a comprehensive programme at
24 the company's level and, of course, it is the responsi-
25 bility of the company under the Mining Act to maintain
26 this operation.

27 THE COMMISSIONER: Are they, on the safety
28 section, a full time people?

29 MR. OSLER: Yes. Those are people full
30 time on safety and nothing else.



1 THE COMMISSIONER: They don't have any com-
2 pany safety associations or anything?

3 MR. OSLER: I think the company is a member
4 of the association. The association on safety.

5 THE COMMISSIONER: But within the company
6 yourself, you don't operate by the safety association?

7 MR. OSLER: Indirectly, through the safety
8 department, which of course works again very closely with
9 our first-aid department. Our safety department, of
10 course, works with the Workmen's Compensation Board and
11 my understanding is it is a close and satisfactory re-
12 lationship.

13 THE COMMISSIONER: You called them safety
14 engineers?

15 MR. OSLER: They are men who are trained.
16 Normally, sir, men taken out of the management and super-
17 visory level of production. They will be trained and
18 act as safety engineers and will eventually, with one or
19 two exceptions, go back into the production field again.
20 So they are not people who are off completely on safety,
21 and might be sort of becoming divorced from the knowledge
22 of the production methods and so on. They are men who
23 will go on to the safety department and be trained in
24 safety procedures with Mr. Young, and after a period as
25 safety engineer, and this would probably be involved with
26 a promotion, he would be promoted back to production. His
27 place will be taken by a new safety engineer. He comes
28 from production and eventually goes back to production.

29 Now with that background, sir, we come to
30 rehabilitation. The company's programme or procedure is



1 that a man is never permitted to go back to work who has
2 been injured, unless there is slip from his doctor, or
3 a Board doctor, authorizing him to go back to work. Now,
4 examples were given of two cases at the company, one they
5 approved and one they thought improper rehabilitation. I
6 can only advise you, sir, that the man with the crutches
7 has never come back to work, and would not be back or
8 allowed in the plant without the permission of his own
9 doctor in this case. The fact that he sits and does
10 nothing -- there is a job of work to do -- the fact he
11 has done nothing is not the failure of the rehabilitation
12 process, but could be the lack of co-operation of the
13 individual to do the very relatively minor amount of
14 work there; but the man who is given a clearance and
15 comes back we have taken him back. It is a very, very
16 exceptional thing to take a man on crutches. We just
17 basically wouldn't do it, because he is too handicapped
18 at that point but obviously his doctor has permitted him
19 and we have been able to find a very sedentary job for
20 him to do, during the period of his incapacity. The main
21 point is a man doesn't come back to our rehabilitation
22 without doctor's authorization.

23 The man who has, I think I explained the
24 other day, a man who has some minor injury, a cut on the
25 finger which involves no compensation and no lost time,
26 he will be kept an eye on. He will be kept out of the
27 wet area so there will be no question of infection or any-
28 thing of that kind of thing. When a man has been away
29 for a long period of time, and a long period of rehabili-
30 tation is indicated, and this is looking at a real long



1 term injury, he will come back to us probably in two
2 ways, one from the Workmen's Compensation Rehabilitation
3 Centre, or possibly by the direction of an orthopaedic
4 surgeon or some person like that who is a specialist in
5 the Sudbury district. He is interviewed by Mr. Young
6 and his officials in the general safety office, to obtain
7 some idea of what his capabilities are and what limit-
8 ations of work he can perform. He is sent back to his
9 own plant or mine and he reports to the local safety of-
10 ficer and is started in on a job consistent with a medi-
11 cal recommendation, and the job available for a ninety
12 day rehabilitation period.

13 During that period he reports to the local
14 safety engineer every week, or he can discuss his pro-
15 gress on the job with the safety engineer. Each week,
16 of course, the safety engineer keeps constant check with
17 the man's progress in rehabilitating himself. During
18 this period he is certainly encouraged to take the oppor-
19 tunity to bid on to any jobs that may be open, as long
20 as it will be in a suitable range. This will be a job
21 over the base rate, so he will have to take a chance on
22 his seniority and other tests to fill the vacancy, but
23 it is open to him and he is entitled to bid. If, at the
24 end of ninety days, the man has made good progress but
25 is not yet able to get back to his normal job, a further
26 period of -- a further ninety day period may be extended
27 in order to bring him back up. If, at the end of ninety
28 days, he has not made the effort for good rehabilitation
29 and we have determined our rehabilitation efforts are
30 useless and ineffective, we advise the Board to that



1 effect and the man goes off light duty. He is offered a
2 job at his regular employment if he wants it, but he goes
3 off the preferred light duty. That is basically the re-
4 habilitation job we do.

5 THE COMMISSIONER: You have some control
6 over one of the situations you referred to, that is where
7 a man is back on light duty and you think he is probably
8 making every effort he should, there is nothing to stop
9 you reporting that to the Board and asking that he have
10 an outside medical.

11 MR. OSLER: This would be a question of a
12 temporary partial disability. The medical determination
13 is not so important in that phase, sir, as it is in the
14 total temporary. If a man is back at work and back with
15 the Board's knowledge and instruction, it is a temporary
16 total disability with a man in the first week or ten days
17 or so, after his injury.

18 THE COMMISSIONER: It is not the short time
19 injury people you are asking the amendment for?

20 MR. OSLER: Yes, it is the short term, the
21 week to ten day man who is on total temporary disability
22 that we really feel is a situation where we would like the
23 ability to ask the Board to appoint a doctor to examine
24 him, to see if he can determine if the man can get back
25 to work.

26 We, no doubt, and I must admit the company
27 does in fact attempt to keep checks on their individual
28 employees who may have suffered any type of injury. If a
29 man reported into the first-aid coming off shift with a
30 cut which he may have dressed at first-aid, as I advised



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1 you the other day a check is kept of that man. If he does
2 not come to work we find out if it is something relating
3 to his finger. To that extent we call the men to deter-
4 mine their condition. We have sent the first-aid men out
5 to determine the condition of a man where there is a sus-
6 pected injury or illness, and to that extent we harass
7 the man if that's the definition of harassment. We encourage
8 men to get back to work. There is no doubt about that.
9 If this is harassment then we come within that definition,
10 but I doubt, in fact, it is harassment, but the man is
11 encouraged to go back to work. We have to find out what
12 is their condition and is it a result of something that
13 occurred at work as a result of an injury.

14 Mr. Young, I have not got statistics of
15 this, but Mr. Young advised me personally about twenty or
16 thirty cases a year would be men who in fact got a minor
17 injury, but stayed off work and did not take part in re-
18 habilitation.

19 THE COMMISSIONER: That is your information?

20 MR. OSLER: Mr. Young's estimate would be
21 twenty or thirty men a year. All men coming back, of
22 course, are directed to a job that is in the capabilities
23 of a man as diagnosed by a doctor, and if there is any
24 question about the doctor's report the safety department,
25 or safety engineer, will contact the doctor to determine
26 what is the area a man can go to. We have had cases where
27 a doctor had some fear in telling the man to go to work.
28 We call back the doctor and tell him the type of work the
29 man would be doing and then in a case like that he says,
30 no, he shouldn't be doing heavy lifting or twisting or



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1 whatever it is. I think sir, that deals primarily with
2 the rehabilitation section.

3 I want to, if I may, deal with some rather
4 ancillary matters. It was suggested at one stage there
5 were more back injuries with men from another province and
6 the province referred to was Newfoundland. I ran a check
7 and only four injured men were from Newfoundland

8 THE COMMISSIONER: The number of back in-
9 jured men were from Newfoundland?

10 MR. OSLER: It was suggested these men were
11 from Newfoundland. Why it should have been chosen as the
12 province I don't know. We have means of checking that.

13 MR. ESTEY: They were saying it was inex-
14 perience.

15 MR. OSLER: Our estimate is that for back
16 cases the incidents of back cases in 1965 and 1966, would
17 not be a question of most of them being men of a year or
18 two year's service. There would be a proportion of them
19 but nothing to explain the size of those figures.

20 In our brief, sir, an example we gave of a
21 man earning one hundred dollars, it was pointed out the
22 company wrote a letter to P.S.I. I would apologize to
23 the Commission, in fact, every one of the fringe benefits
24 with the exception of P.S.I., and that would include the
25 Ontario Hospital, life insurance, sickness and accident,
26 those are in fact all paid by the company for a period of
27 one year following the man's injury.

28 MR. ESTEY: All paid?

29 MR. OSLER: Those are paid by the company
30 en toto but P.S.I., is not. That is the thirty-nine cents.



1 MR. ESTEY: Page twelve at the very top,
2 that note has to be added to it.

3 MR. OSLER: Basically the programmes are
4 shared fifty fifty. The company and employees share fifty
5 fifty, with the exception of P.S.I. where the company
6 bears sixty percent and the man forty percent. If the man
7 goes on compensation the company picks up one hundred per-
8 cent of hospital insurance and life insurance. One hun-
9 dred percent of the Ontario Hospital, group life, sickness
10 and accident insurance the company picks up one hundred
11 percent for one year after the accident. In the case of
12 P.S.I., the company has it for one month and thereafter
13 the employee is responsible to pay his forty percent if he
14 wants to continue the coverage.

15 MR. ESTEY: What about the Canada Pension,
16 Mr. Osler, which category does that fall into?

17 MR. OSLER: Mr. Young can tell you that.
18 Our information is everything but P.S.I. I was particul-
19 arly interested in this particular company plan, in view
20 of the suggestion, I was under the impression originally
21 they were all paid. P.S.I. is the only one but the in-
22 come tax, of course, is not chargeable. Unemployment is
23 not. I gather the union waives their dues during the
24 period, but the others with the exception of P.S.I. are
25 paid by the company for a year. The problem of the Canada
26 Pension Plan is based on earnings. It is an earnings'
27 situation and this is why I wonder on what basis would a
28 payment be made and whether on the basis of compensation
29 or not.

30 Sir, with that I would like, if I might.



1 read the final conclusion of our brief. Just before read-
2 ing that, sir, I still think I must emphasize the situ-
3 ation that if these cases are to be dealt with under Work-
4 men's Compensation, with the request for complete coverage
5 and no loss in earnings in any way shape or form, we are
6 really coming to the situation where we are looking at
7 a negligence matter where, in each and every case, the
8 company has been one hundred percent negligent and we must
9 remember that in a great many cases and well over fifty
10 percent of the cases it is not the company's negligence
11 which causes the accidents. When you are considering the
12 question of percentages of compensation this must be borne
13 in mind.

14 In reading the summation, the company wishes
15 to repeat that, in its opinion, the Workmen's Compensation
16 Act of Ontario has been of inestimable value to both em-
17 ployees and employers in the province. It wishes to em-
18 phasize, however, that any amendment which would have the
19 effect of casting upon the classes of industries as con-
20 stituted at that time financial burden resulting from
21 accidents/ⁱⁿpast years, or which would increase the amount
22 of compensation payable, as compared with the income
23 available to the employee had he not been injured, to a
24 point beyond proper insurance practice, would be unsound
25 and detrimental to the interest and welfare of Ontario
26 industry and in the case of the latter type of amendment
27 would severely jeopardize the recently developed rehabili-
28 tation procedures which in fact require positive assistance
29 if they are to be fully effective.

30 The company wishes to draw particular atten-



1 tion to the alarming increase in disabilities to the back
2 which in its opinion is not attributable to industry, and
3 points to the urgent need of amendment to the Workmen's
4 Compensation Act to remove the unjustifiable burden placed
5 on industry by the payment of compensation where disability
6 is not truly connected with employment.

7 The company believes that the Workmen's
8 Compensation Act should not as a result of political pres-
9 sure or expedience be confused with or distorted into that
10 type of legislation which may be required from time to
11 time for the relief of persons who may suffer through dis-
12 ablement from causes not attributable to their work or by
13 reason of the increased cost of living, for the relief
14 of indigents, or for old age pensions, mother's allowance
15 and similar charitable or social purposes.

16 All of which is respectfully submitted. The
17 International Nickel Company of Canada, Limited.

18 THE COMMISSIONER: Thank you, Mr. Osler,
19 Mr. Estey have you any questions?

20 MR. ESTEY: One question is have you had
21 time to look at Table 10, 11 and 12 submitted last week
22 by Mr. MacDonald, in connection with comparable cases in
23 your rating, I take it 076?

24 MR. OSLER: I don't think I have seen the
25 tables, Mr. Estey, I am sorry.

26 MR. ESTEY: We will give them to you then
27 and you might look them over. They are computations
28 based on the numbers of compensable cases in your indus-
29 try for the years 1960 to 1965. It compares those to the
30 frequency rates of the schedule one as a whole.



1 MR. OSLER: A big table where it indicates
2 the various amounts for compensation, medical and so on?

3 MR. ESTEY: No, this just gives the number
4 of claims for each of those six years for your rate on
5 schedule one, and the frequency rate for one million man
6 hours and the payroll fluctuations in the same number of
7 years. For example, you can see from 1964 to 1965 your
8 payroll went up eleven point eight percent, whereas in
9 that same year your claims filed increased thirty-nine
10 percent and so on.

11 MR. OSLER: The payroll, of course, is not
12 necessarily -- I think I am right in saying this that a
13 payroll is not necessarily the guide. It is correct if
14 your wage rates are stable but not if you have a wage in-
15 crease and there has been a general wage increase every
16 year.

17 MR. ESTEY: Yes, but you have to figure out
18 your collective agreement terms and take that percentage
19 out of the increase in wages, but for that frequency of
20 one million man hours, which is objective, your frequency
21 went up ten point seven percent and at the same time your
22 number of claims, in gross, went up some thirty-nine per-
23 cent, so it would look as though your employment increased
24 in that same year. Have you any comments on this?

25 MR. OSLER: I haven't seen that, I am afraid.
26 The only thing I observe, Mr. Estey would be I am not sure.
27 It could be very confusing, the mining and smelting or
28 taking in the copper refinery, or --

29 MR. ESTEY: Just the 076 rating is all that
30 is in the table.



1 MR. OSLER: Well, our numbers of employees
2 you will see --

3 MR. ESTEY: There is a little blue book
4 that covers that, however, instead of taking the time of
5 the Commission right now, if you have any comments would
6 you get in touch with us?

7 MR. OSLER: Mr. Estey, that table I filed
8 on Exhibit "26" would give you the fluctuation of the
9 number of employees. We went up eleven hundred men be-
10 tween 1964 and 1965, but that was in mining and smelting.

11 MR. ESTEY: When you are looking at the
12 Tables 10, 11, 12 and 13 the rate covers mining reduction,
13 smelting treatment for nickel and copper.

14 MR. OSLER: Does it include railways? That
15 does include the railways, I am sorry.

16 THE COMMISSIONER: If you have not had a
17 copy of this, we can secure one for you.

18 MR. OSLER: No, sir, we have not had one

19 MR. KERR: I will be glad to provide Mr.
20 Osler with the copies.

21 MR. ESTEY: I have two topics to ask you
22 about. I will be brief. The rehabilitation, the ninety
23 day plan you described, what is International Nickel's
24 policy about discharging a man who is injured and cannot
25 do the work?

26 MR. OSLER: This is just the very thing,
27 Mr. Estey. We not only try to find him occupational em-
28 ployment, we bring him back to light duty and go to every
29 effort to give him work. The driller doesn't go back to
30 drilling. He may work in the dry, the lamp room, in a



1 warehouse underground, but to preferred light work as
2 soon as the doctor clears him.

3 MR. ESTEY: You give him medically approved
4 work and you keep him on that until you decide he can't
5 get back to his old trade?

6 MR. OSLER: Until he assimilates himself
7 into a position where he goes back to his original job,
8 or back into some light job. He may have been a driller
9 or working in the stope. He may go back as a switchman
10 or motorman.

11 MR. ESTEY: That is the man on light duty.
12 What is your policy on a man who has a temporary total
13 disability and he is off for that solidly for six months,
14 what does the company do? Do they wait until he is back?

15 MR. OSLER: If he has a temporary total dis-
16 ability he does not come back unless his doctor recommends
17 him to come back to work.

18 MR. ESTEY: Do you discharge him?

19 MR. OSLER: Now the only time we do, it
20 isn't a question of discharge it is going to be a question
21 of severing employment. This is a man who has not worked
22 for some time and has been cut off his recall right, and
23 that sort of thing. If, for example, that man while on
24 compensation would have been laid off because of reduction
25 in the working, if his seniority had come up, and if he
26 was off long enough so the period of time for recall would
27 have gone and never come back, we would treat him as though
28 he would have continued and been laid off in due course.

29 MR. ESTEY: If there had been no reduction
30 in the work force, how long do you wait?



1 MR. OSLER: We never close a man off except
2 say, a man who is completely and truly permanently totally
3 disabled. Of course, even if he recovered we would re-
4 employ him.

5 MR. ESTEY: Let me move on to safety matters
6 and I am finished. We have heard considerable about the
7 Mine's Accident Prevention Association and, I take it,
8 International Nickel is an active member in that Association?

9 MR. OSLER: Yes.

10 MR. ESTEY: Do you have safety meetings on
11 company time of supervisory personnel under training?

12 MR. OSLER: I am sorry I didn't make this
13 point clear, Mr. Estey. Our safety department once a
14 month has all members of the supervision -- and that is
15 in the various plants and mines -- are gathered under the
16 supervisor of that plant and safety engineer Mr. Young,
17 at which time they will receive safety instruction, edu-
18 cation and all the requirements are given to the super-
19 visory level of the operation.

20 MR. ESTEY: I take it that instruction is
21 given on the job?

22 MR. OSLER: On the job instruction is given
23 once a week for every shift. Possibly to every junior.
24 This is a full demonstration, not just instruction. A
25 full demonstration of a particular facet of prevention
26 work.

27 MR. ESTEY: Do you have visits from the re-
28 presentatives of the Mine's Accident Prevention Association?

29 MR. OSLER: Yes, we do.

30 MR. ESTEY: Do they participate in the on



1 the job training?

2 MR. OSLER: Perhaps Mr. Young could answer.

3 MR. YOUNG: Mr. Estey, yes. Due to the type
4 of our organization they do not spend a lot of their time
5 with us, but when we need them they help us. They supply
6 us with films. All their films are shown on the property.
7 Any time they visit they come to help us. In the Sudbury
8 area they will come three or four times a year, but they
9 cover a lot of the rest of Ontario at the same time.

10 MR. ESTEY: We heard they divide the country
11 into areas and groups and the various mining communities
12 form their own discussion groups for safety, under the
13 Mine's Accident Association. Does International Nickel
14 belong to one of these?

15 MR. YOUNG: We don't have a group in the
16 Sudbury area, there is only Falconbridge and ourselves and
17 actually we have different problems. Mr. Osler explained
18 to you they do come up and help with the shafting group.
19 We have a shafting group in the safety programme.

20 MR. OSLER: For the town?

21 MR. YOUNG: For the contractors who are
22 sinking shafts for us. The Mine's Accident Prevention
23 Association do come in and give them a lot of help.

24 MR. OSLER: This shaft sinking is carried
25 out by an independent contractor, not by the normal methods.

26 MR. ESTEY: But the two mines, Falconbridge
27 and yourself, operate their safety programmes independently
28 but you are both members of the Association?

29 MR. YOUNG: Yes. They give us help any time
30 we ask for it and they send every month literature to us



1 which we use in the safety programme.

2 MR. ESTEY: The safety regulations are those
3 of the Department of Mines for the underground institutions
4 and the Department of Mines for above ground plants, but
5 some of your equipment is under the Department of Labour
6 regulations?

7 MR. OSLER: That is right. The Mining Act
8 pretty well covers all aspects insofar as regulations in
9 relationship to safe operations. There is the Boiler and
10 Pressure Vessels Act, the Operating Engineer's Act. The
11 Department of Labour do come in and inspect but they do
12 this in co-operation with the Department of Mines. If a
13 boiler inspector can't get up immediately, the Department
14 of Mines' inspector, who is an engineer, will come in and
15 look at the boiler.

16 MR. ESTEY: And your educational programme
17 takes into account all the regulations, the Department of
18 Mine's Regulations, the Department of Labour Regulations
19 as well?

20 MR. YOUNG: Yes, and the Department of
21 Health where you bring first-aid.

22 MR. OSLER: It takes in the Compensation's
23 own safety regulations which in many cases are more re-
24 strictive than those in the Mining Act.

25 MR. ESTEY: Do you have any regulations
26 suggested to you by the Mine's Accident Prevention Associ-
27 ation?

28 MR. YOUNG: Yes, they will pass on to us
29 conditions or suggestions that may have come about by
30 their travelling to other parts of Ontario, and they will



1 pass on literature to us to see if we can use the sugges-
2 tions or regulations in our own property.

3 MR. ESTEY: Mr. Young, thank you very much,
4 and Mr. Osler. That is all we have.

5 THE COMMISSIONER: That concludes this, Mr.
6 Estey? It is necessary to adjourn until Wednesday morn-
7 ing for the convenience of those who wish to appear and
8 were not able to come tomorrow, so we are adjourning until
9 Wednesday at 10:00 A.M.

10
11 *****

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14 The Commission adjourned at
15 4:50 P.M.

16 *****
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PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

20

2 November 1966

OFFICIAL REPORT

NETHERCUT & YOUNG LIMITED
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Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
R.C. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation

BEFORE: The Honourable Mr. Justice G.A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
East, Toronto, Ontario, on
Wednesday, November 2, 1966

APPEARANCES:

W.Z. Estey (C.C.)
and)
H.D. Guthrie)

Counsel for the Commission

D. Campbell)
G. Sampson)

Construction Safety Association

B. Legge)
W.R. Kerr)

Workmen's Compensation Board

International Nickel Company



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Toronto, Ontario

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ERRATA

FOUND 7

Page 825, line 24: "\$150" should read "\$115"

Page 826, line 3: "\$2.00" should read "\$7.00"

Page 835, line 29: "some" should read "sum"



1 --- At 10:00 A.M., the Hearing Commenced.

2 THE COMMISSIONER: Yes, Mr. Estey...

3 MR. ESTEY: Mr. Commissioner, we have with
4 us this morning the officers of the Construction Safety
5 Association and we may start with them. Would you gentle-
6 men for the record introduce yourselves so the transcript
7 will reveal your identify?

8 MR. DAVID CAMPBELL: I am David Campbell,
9 President of the Construction Safety Association for 1966.
10 I am a contractor by occupation.

11 MR. GIL SAMPSON: I am Gil Sampson, General
12 Manager of the Construction Safety Association.

13 MR. ESTEY: Gentlemen, we have heard from
14 the other safety associations their views on how they are
15 functioning as a voluntary agency in the community, seek-
16 ing to improve the safety standards and lowering the in-
17 cidents of accidents; and how these associations should
18 operate in their roll with regard to construction. We
19 have heard directly from the contractors on one hand, and
20 a great deal from the participating trade unions on the
21 other hand as to the level of safety efficiency in this
22 industry and to what should or should not be done about
23 it. In order to perhaps guide you in what you want to
24 discuss with us, the trade unions have taken exception to
25 the procedures your associations follow, in generating
26 your efforts one-third into mass media safety announce-
27 ments and about one-third into instruction, and about
28 one-third to all the rest of the things, overhead, salaries,
29 posters and so on.

30 First of all, would you advise the Commis-



1 sioner what your 1966 budget is, how it is made up and
2 hopefully what percentage of the industrial assessment,
3 the construction industrial assessment, this budget re-
4 presents? I don't know which one of you wishes to speak.

5 MR. CAMPBELL: The 1966 budget was one
6 million three hundred and fourteen thousand five hundred
7 dollars. It was made up of general administration, seven-
8 ty-four thousand --

9 MR. ESTEY: Excuse me, what is that figure?

10 MR. CAMPBELL: Administration, seventy-four
11 thousand seven hundred and fifty dollars. Director's
12 meetings and travelling expenses, ten thousand dollars.
13 General office, one hundred and forty-eight thousand three
14 hundred and twenty-five dollars. Educational department,
15 three hundred and thirty-eight thousand one hundred and
16 thirty dollars.

17 THE COMMISSIONER: What is that figure?

18 MR. CAMPBELL: Three hundred and thirty-
19 eight thousand one hundred and thirty dollars. The man-
20 agement counselling department, one hundred and twelve
21 thousand four hundred dollars.

22 THE COMMISSIONER: Again I will have to ask
23 you please?

24 MR. CAMPBELL: One hundred and twelve thou-
25 sand four hundred dollars. The analytical department,
26 four thousand five hundred dollars. Advertising and
27 public relations, six hundred and twenty-six thousand
28 three hundred and ninety-five dollars.

29 MR. ESTEY: Is that the total?

30 MR. CAMPBELL: That is the total.



1 MR. ESTEY: And the 1965 figure we heard
2 was one million two hundred thousand dollars?

3 MR. CAMPBELL: One million one hundred and
4 sixty thousand dollars. I can give you the proposed for
5 1967 if you want. It was approved by a director's meet-
6 ing yesterday. This hasn't been submitted to the Work-
7 men's Compensation Board but if it is of any help to you
8 it is, general administration --

9 MR. ESTEY: What is the total to start with?

10 MR. CAMPBELL: One million four hundred and
11 fifty-three thousand nine hundred and seventy-eight dol-
12 lars.

13 MR. ESTEY: Right.

14 MR. CAMPBELL: General administration,
15 sixty-three thousand three hundred and eighty-five dollars;
16 director's meetings, eleven thousand five hundred dollars;
17 general office, one hundred and forty-six thousand one
18 hundred and thirty-five; education, four hundred and
19 twenty-four thousand two hundred and fifteen dollars;
20 management counselling, one hundred and forty-five thou-
21 sand five hundred and one dollars; analytical department,
22 one hundred and two thousand and two dollars.

23 MR. ESTEY: What is that amount, one hundred
24 and two thousand?

25 MR. CAMPBELL: One hundred and two thousand
26 and two dollars.

27 THE COMMISSIONER: It was four thousand five
28 hundred dollars for the last year?

29 MR. CAMPBELL: That is correct. Advertising
30 and public relations, five hundred and sixty-two thousand



1 two hundred and forty dollars.

2 MR. ESTEY: Was that analytical figure up
3 from four thousand five hundred dollars to one hundred
4 and two thousand?

5 MR. CAMPBELL: Yes.

6 MR. ESTEY: Mr. Campbell, perhaps you could
7 explain the items. What, first of all, is general admin-
8 istration for? There is sixty-three thousand for next
9 year, what would that include?

10 MR. CAMPBELL: It includes the salaries of
11 our General Manager, and the Assistant General Manager.
12 There are employee benefits and there are travelling ex-
13 penses and the meetings and special meetings and seminar
14 expense.

15 MR. ESTEY: For those people?

16 MR. CAMPBELL: For the whole organization.

17 MR. ESTEY: These meetings are in the gener-
18 al administration are they?

19 MR. CAMPBELL: Those particular meetings,
20 yes, sir.

21 MR. ESTEY: Is the total figure you gave us
22 one million three hundred and fourteen thousand dollars.
23 How does that compare to one million one hundred and sixty
24 thousand and it is broken down in the annual report of the
25 Board, which is Exhibit "18". Here the Construction
26 Safety Association received from the Board one million
27 one hundred and sixty thousand but they also received,
28 in the form of free rent I suppose, forty-two hundred dol-
29 lars, and showed a Workmen's Compensation Board adminis-
30 tration expense of forty-two thousand.



1 THE COMMISSIONER: Where did you find those
2 figures?

3 MR. ESTEY: Page nineteen, Mr. Commissioner.

4 MR. CAMPBELL: The answer to that is the
5 figures I have given you do not include the incumbrance
6 put on by the W.C.B.

7 MR. ESTEY: So that is equivalent to the
8 grant in the annual report last year of one million one
9 hundred and sixty thousand? That was a cash grant?

10 MR. CAMPBELL: That is correct.

11 MR. ESTEY: Then in your director's expense,
12 that is the cost of bringing them to the meetings in
13 Toronto?

14 MR. CAMPBELL: The meetings necessarily
15 have not all been in Toronto, because there are twenty
16 thousand contractors and most of them are in the communi-
17 ties close to Toronto and Hamilton, so the preponderance
18 of our directorship comes from this area, but we have had
19 meetings at Sarnia and the Lakehead.

20 THE COMMISSIONER: There are twenty thou-
21 sand members in your association?

22 MR. CAMPBELL: Yes.

23 THE COMMISSIONER: Are all the contractors
24 numbered?

25 MR. CAMPBELL: Every workman with a Work-
26 men's Compensation number.

27 MR. ESTEY: How many employees is that?

28 MR. CAMPBELL: I can give you an approxi-
29 mate number, two hundred and twenty-five thousand.

30 MR. ESTEY: About ten percent of the total



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1 coverage of the Board is in construction, is that right?
2 What percentage of your 1966 assessment under those two
3 classes which comprise the Construction Safety Associa-
4 tion, twenty-three and twenty-four?

5 MR. SAMPSON: And twenty-one, sir.

6 MR. ESTEY: Is represented by your 1966
7 budget?

8 MR. CAMPBELL: I believe about six percent
9 but I could be wrong.

10 THE COMMISSIONER: What?

11 MR. ESTEY: About six percent.

12 MR. SAMPSON: That is an estimate at this
13 time. What we estimate the assessment might be in 1966.

14 MR. ESTEY: What would the figure be in
15 1965?

16 MR. SAMPSON: In 1965, five percent.

17 MR. ESTEY: So you are spending more, re-
18 latively, in the Construction Safety Association than the
19 other associations whose average is three point eight per-
20 cent?

21 MR. CAMPBELL: That is right.

22 MR. ESTEY: Does the item, 'general office
23 expense', I take it, one hundred and forty-eight thousand
24 is for the office staff situated in Toronto?

25 MR. CAMPBELL: That is correct.

26 MR. ESTEY: And the cost of running the
27 office?

28 MR. CAMPBELL: Telephone, telegraph, legal
29 aid, stationery and office supplies, membership and sub-
30 scriptions, equipment repairs and maintaining new equip-



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1 ment, printing and publishing.

2 MR. ESTEY: Then you gave a heading for
3 "education", for the education department of three hundred
4 and thirty-eight thousand this year; four hundred and
5 twenty-four thousand next year. What is that money spent
6 on, how is it spent?

7 MR. CAMPBELL: Our educational department
8 consists of, at the moment, fourteen instructors with two
9 supervisors you might say. These employees put on edu-
10 cational -- we have three types of educational courses and
11 fifteen special courses -- and we have talked directly at
12 seventeen thousand two hundred and thirty-four people in
13 educational courses.

14 MR. ESTEY: During 1965?

15 MR. CAMPBELL: During 1966, to this moment.

16 MR. ESTEY: Let me interrupt you if I may.
17 You give safety courses. Are they on the job, in the
18 evening or what?

19 MR. CAMPBELL: Some of them are on the job
20 and some in the evening.

21 MR. ESTEY: Where are they given?

22 MR. CAMPBELL: We go to a large contractor's
23 site, on his premises.

24 MR. ESTEY: Right on the site in daytime?

25 MR. CAMPBELL: Quite a few of the different
26 courses are given right on the site.

27 MR. ESTEY: Are the men given the courses
28 supervisory personnel or workmen?

29 MR. CAMPBELL: I can give you a little bit
30 of an idea of the breakdown of the total I gave you, and



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1 I hope it balances. Labour is three thousand seven hun-
2 dred and twenty; tradesmen eight thousand four hundred
3 and ninety-one; supervisory two thousand nine hundred and
4 twenty-seven. Safety supervisors four hundred and four,
5 executives seven hundred and sixty-two, engineers three
6 hundred and eight and not known six hundred and twenty-
7 two.

8 MR. ESTEY: That includes those numbers in-
9 cluded in both on the job instruction and classes?

10 MR. CAMPBELL: That is right, sir.

11 MR. ESTEY: So the ones on the job are
12 given to people on the job. They are being paid, I take
13 it?

14 MR. CAMPBELL: Right.

15 MR. ESTEY: And the ones in the evening may
16 or may not be paid, you wouldn't know?

17 MR. CAMPBELL: I wouldn't know.

18 MR. ESTEY: Let us deal with the evening
19 instruction. Is that given in more than one centre in
20 Ontario?

21 MR. CAMPBELL: It is given in any centre
22 that we can organize the trades.

23 MR. ESTEY: Let us deal with 1966. Would
24 you give most of the courses here in Toronto, or are they
25 evenly spread through the main districts of southern
26 Ontario?

27 MR. SAMPSON: We have run some one hundred
28 and sixty to one hundred and seventy-five courses every
29 month.

30 MR. ESTEY: What do you mean by a course?



1 MR. SAMPSON: We have a series of courses,
2 sir. A basic introductory course which is about a three
3 hour course. This is given to a group of men and there
4 is discussed basic fundamentals, some psychology and what
5 it is all about. From there they graduate through a "C"
6 course, a "B" course and an "A" course. We carry them
7 further and further and further.

8 MR. ESTEY: There are three hours in the
9 introduction, how many in "C", "B" and in "A"?

10 MR. SAMPSON: The "C" course is eight hours.
11 The "B" course is sixteen hours and the "A" course would
12 run around three days about twenty-four hours.

13 MR. ESTEY: All evening courses?

14 MR. SAMPSON: These are largely evening,
15 but more and more we are securing daytime courses at the
16 contractor's expense on the job, where he may close a
17 job down by noon and they gather at a local motel or meet-
18 ing room somewhere, and go through to five o'clock.

19 MR. ESTEY: Is there much of that done?

20 MR. SAMPSON: Yes, this is increasing great-
21 ly.

22 MR. ESTEY: For all kinds of contractors,
23 electrical contractors, mechanical contractors, sub-con-
24 tractors and general contractors?

25 MR. SAMPSON: Yes, sir, the whole gamut. It
26 is general as you mentioned.

27 MR. ESTEY: I take it your association in-
28 cludes the fabrication end of a steel company?

29 MR. SAMPSON: That is right.

30 MR. ESTEY: These courses which you give



1 are they given by the fourteen instructors Mr. Campbell
2 mentioned a moment ago?

3 MR. SAMPSON: That is right.

4 MR. ESTEY: Where are the instructors lo-
5 cated?

6 MR. SAMPSON: They all work out of Toronto,
7 with the exception of two, who teach in different langu-
8 ages and whom we have not on a full payroll basis, but
9 we have trained them and we pay them on a per diem basis
10 when required.

11 MR. ESTEY: What languages?

12 MR. SAMPSON: Portugese and French at the
13 moment.

14 MR. ESTEY: No Italian?

15 MR. SAMPSON: Italian, we have two full
16 time instructors on the staff who teach Italian.

17 MR. ESTEY: Two of the fourteen teach
18 Italian?

19 MR. SAMPSON: Right.

20 MR. ESTEY: In addition, you have the part-
21 time people who teach in Portugese and in French?

22 MR. SAMPSON: That is right.

23 MR. ESTEY: But your big foreign language
24 on posters is Italian?

25 MR. SAMPSON: That is right. We estimate
26 roughly fifty percent of the labour force are of Italian
27 origin.

28 MR. ESTEY: I take it you print your posters
29 in Italian, in some cases?

30 MR. SAMPSON: Right.



1 MR. ESTEY: Do you run your television
2 announcements in Italian?

3 MR. SAMPSON: Yes, sir.

4 MR. ESTEY: And the newspapers?

5 MR. SAMPSON: Yes, sir. We use Italian
6 newspapers and we buy, wherever we can, Italian radio and
7 television wherever they are available, and the courses
8 run from the Quebec border to the Manitoba border. Our
9 men are moving constantly.

10 MR. ESTEY: To get to the courses. The men
11 are all based in Toronto but they go where the audience
12 is?

13 MR. SAMPSON: That is right.

14 MR. ESTEY: In Toronto, are the evening
15 courses given down on Victoria Street?

16 MR. SAMPSON: Largely now, since last Dec-
17 ember, when we moved into our new quarters where we have
18 proper accommodation. The accommodation is used every
19 night of the week practically. Sometimes two and three
20 of the available halls on our floor are used at night.

21 MR. ESTEY: I take it the great advantage
22 of bringing the people into the Metro area is because
23 you have motion pictures and blackboards and so on?

24 MR. SAMPSON: We have all that with us. If
25 we go to Kapuskasing we take that with us.

26 MR. ESTEY: You have the sound and para-
27 phernalia and stage and give the course in some employer's
28 facility?

29 MR. SAMPSON: This year we have been ex-
30 ceedingly fortunate. We budgeted this year, as I recall,



1 thirty-five thousand for rental of halls. We have not
2 spent twelve thousand dollars in that area. We put on
3 a drive to get free halls and we are getting free halls.
4 You would be amazed at the type of people giving us free
5 space.

6 MR. ESTEY: In the routine of your opera-
7 tions I would take it you administer these courses pre-
8 dominately in the Toronto area, the Hamilton area and
9 London area. In the largest centres of population you
10 would have most of the construction conducted?

11 MR. SAMPSON: That is right. Fifty percent
12 of the construction and labour force are in York and
13 Wentworth counties.

14 MR. ESTEY: What do you do for the large
15 projects such as Ontario Hydro?

16 MR. SAMPSON: We don't get involved with
17 Ontario Hydro. They have their own separate association.

18 MR. ESTEY: What about contractors working
19 with the Ontario Hydro, what do you do with them?

20 MR. SAMPSON: We work with them, but there
21 are very few contractors working for Hydro, but those that
22 do we work with them.

23 MR. ESTEY: That applies generally where
24 the owner of the property may not be in the construction
25 industry, but who may be and not covered by the Act? If
26 he lets the work to a contractor that is part of your
27 membership?

28 MR. SAMPSON: All contractors whoever they
29 work for. Yes.

30 MR. ESTEY: Moving down the page you come



1 to management counsel, one hundred and twelve thousand
2 dollars last year, and up thirty-five thousand to about
3 one hundred and forty-five thousand, what is that?

4 MR. SAMPSON: We are going to extend that
5 a little.

6 MR. ESTEY: What does that department do?

7 MR. SAMPSON: The management counsellors
8 are salesmen who have been trained to contact the direc-
9 tors on a daily basis and their purpose in life is to
10 try to persuade the contractors number one, on their
11 moral responsibility within the industry as far as a
12 man's safety is concerned, and number two, to make sure
13 they are aware of the acts in our province that dictate
14 the laws of safety. Number three, to encourage them to
15 encourage their work force to attend our educational
16 courses. Number four, to establish or endeavour to es-
17 tablish within those contractors' companies proper safety
18 programmes and try to --

19 MR. ESTEY: How many of those management
20 counsellors do you have?

21 MR. SAMPSON: Ten.

22 MR. ESTEY: Where are they based?

23 MR. SAMPSON: Six are in Toronto and four
24 outside. One is at Ottawa, one is at Sudbury, one at the
25 Lakehead and one at Kingston. The six are out of the
26 Toronto office.

27 MR. ESTEY: None within western Ontario?
28 None at Windsor, Sarnia and London?

29 MR. SAMPSON: No, we work that out of
30 Toronto.



1 MR. ESTEY: Now that budget is increased,
2 I take it, you will increase the staff in 1967?

3 MR. SAMPSON: Right.

4 MR. ESTEY: And I take it you found this is
5 a very effective way to introduce safety measures to the
6 work force?

7 MR. SAMPSON: That is right.

8 MR. ESTEY: By persuading the employers to
9 stage the campaigns to support the campaigns and give
10 you the free halls and all you need?

11 MR. SAMPSON: That is right. Since the
12 inception of Section 86(6)(A) of the Workmen's Compensation
13 Act --

14 MR. ESTEY: That pushes people along a
15 little bit? That raises another great topic. Do you
16 have any construction codes of safety you disseminate to
17 your work forces and companies?

18 MR. SAMPSON: Yes we do. We have a very
19 wide and broad library of what we call maximum safety
20 methods.

21 MR. ESTEY: I avoid the word "regulation"
22 but it is a convenient word. Do you have a code of dir-
23 ections or a manual of safety procedures?

24 MR. SAMPSON: Yes, sir.

25 MR. ESTEY: What do you call it?

26 MR. SAMPSON: The Construction Safety Book
27 which will be off the press within the next ten days.
28 This book was created this year and this book has gather-
29 ed together most of the safety code books we have under
30 one cover. We have safety code books for practically all



1 of the factions of our industry: Painting and decorating,
2 steel and so on, highway and road building.

3 MR. ESTEY: A separate booklet for each
4 industry?

5 MR. SAMPSON: Yes, sir.

6 MR. ESTEY: Do those booklets include the
7 regulations under the Construction Safety Act?

8 MR. SAMPSON: No they do not. Not those
9 books. In one or two we have we refer to the Construc-
10 tion Safety Act and in much of our courses we teach and
11 use a good deal of the regulations in the Construction
12 Safety Act and so on. These are the actual laws.

13 MR. ESTEY: Do any of the instructions
14 consist of educating the workmen and supervisors in the
15 legal standards they are to conform to?

16 MR. SAMPSON: That is right, and we have
17 a course in addition to that. We have a manual of safe
18 procedures which incorporates any regulations adopted by
19 the departments concerned, departments of government.

20 MR. ESTEY: Does the code include provisions
21 your industry has found helpful in improving safety stan-
22 dards?

23 MR. SAMPSON: Right. They are really the
24 maximum, whereas the Construction Safety Act, for example,
25 is basic safety.

26 MR. ESTEY: Things you must do on a manda-
27 tory basis?

28 MR. SAMPSON: Right. We go further than
29 that.

30 MR. ESTEY: Your code is the desirable or



1 optimum?

2 MR. SAMPSON: This is the minister in the
3 pulpit when talking to his congregation who says if you
4 move outside you have certain laws but they are not as
5 high in their requirements as the minister would like
6 from the pulpit.

7 MR. ESTEY: I don't know that I like it
8 but it seems to be a good parallel.

9 MR. SAMPSON: Well, it is earthy anyway.

10 MR. ESTEY: These regulations and construc-
11 tion codes you have, have they any force in law?

12 MR. SAMPSON: No, sir.

13 MR. ESTEY: When your people travel around,
14 your fourteen instructors and ten counsellors, and next
15 year more, some twenty-four to thirty people, I take it,
16 when they observe breaches of the voluntary safety codes
17 would they draw the management's attention to it?

18 MR. SAMPSON: That is right, and in the
19 odd case where we do find these things, they will even
20 communicate with the local inspector.

21 MR. ESTEY: You are talking now of the
22 Department of Labour's inspector?

23 MR. SAMPSON: Or the municipal inspector.

24 MR. ESTEY: The building inspector?

25 MR. SAMPSON: Yes.

26 MR. ESTEY: Do you have any formal method
27 of liaison with the two levels of government, municipal
28 and provincial?

29 MR. SAMPSON: No, but we have a co-operative
30 one.



1 THE COMMISSIONER: A co-operative liaison,
2 what is the difference between that and formal liaison?

3 MR. SAMPSON: May we define a formal liaison?
4 What shall we mean by formal liaison?

5 MR. ESTEY: Do you have some regular meet-
6 ings with the department to exchange information about
7 plans and construction sites your people have inspected,
8 and you turn reports over to the Department of Labour?

9 MR. SAMPSON: We don't inspect sites, so we
10 have no real reason to liaison with the Department of
11 Labour in that area.

12 MR. ESTEY: I thought you had to see that
13 they were following the principles of the construction
14 code?

15 MR. SAMPSON: We do not.

16 MR. ESTEY: It is just a casual inspection?

17 MR. SAMPSON: Our job is educational and
18 not inspection.

19 MR. ESTEY: When your twenty-four to thirty
20 men go on the job do they observe the procedures actually
21 in effect?

22 MR. SAMPSON: Let me go back just a moment.
23 The educational department are a busy group and not always
24 on construction sites. They are busy daytime and evening
25 putting on educational courses for groups of construction
26 men. They spend very little time on construction sites.

27 MR. ESTEY: Who gives the instructions on
28 the construction sites you told me about earlier?

29 MR. SAMPSON: Where we are required or able
30 to sell a contractor to put on a course on an on the job



1 site.

2 MR. ESTEY: In those occasions he would be
3 on the site, but generally speaking you are saying your
4 field men don't go on a regular basis to construction
5 projects?

6 MR. SAMPSON: Absolutely.

7 MR. ESTEY: They administer the instruction
8 away from the projects, but on occasion they do this on
9 the site itself?

10 MR. SAMPSON: That is right.

11 MR. ESTEY: Is that because of the nature of
12 construction as opposed to manufacturing, that there are
13 no facilities on a construction site?

14 MR. SAMPSON: A little over four years ago
15 the function of the Construction Safety Association was
16 one of safety counselling, and the Association had a mov-
17 ing staff of twenty to twenty-five safety counsellors
18 whose job was to visit construction sites throughout the
19 Province of Ontario, and they would inspect these jobs
20 from top to bottom.

21 MR. ESTEY: How long ago was this?

22 MR. SAMPSON: Almost five years ago, just
23 prior to the inception of the Construction Safety Act, in
24 August, 1962. Their function was to inspect these con-
25 struction sites and to fill out a survey report and note
26 unsafe conditions or any unsafe act they might see. Then
27 they would draw this to the attention of the superintendent
28 on the project, leave a copy and get him to sign this.
29 They would leave a copy with him and a copy was mailed to
30 the contractor at the head office and a copy was mailed to



1 our office. The function there was again one of persua-
2 sion and education, if you will, to draw to the attention
3 of the contractor the unsafe conditions on the site, and
4 ask them to remedy these immediately. With an average
5 force of some twenty to twenty-five men, with perhaps
6 approximately three to four thousand construction jobs
7 all going on daily in the Province of Ontario, which is
8 about average, this would spread twenty to twenty-five
9 men very thin, so that the frequency of visiting per job
10 site would be six to eight to ten to twelve weeks.

11 MR. ESTEY: Some construction projects only
12 last that long so you would never make it to those sites?

13 MR. SAMPSON: That is right. There would
14 be boys and girls working in there now but not on construc-
15 tion.

16 MR. ESTEY: How long was that practice
17 followed?

18 MR. SAMPSON: Perhaps since the formation
19 of the safety association around 1929 and 30.

20 MR. ESTEY: And it was discontinued?

21 MR. SAMPSON: It was discontinued within
22 six to nine months after the inception of the Construction
23 Safety Act, and we swung over completely to the educational
24 side.

25 MR. ESTEY: And you left inspection to the
26 municipalities and Department of Labour?

27 MR. SAMPSON: Yes, sir. We found for ex-
28 ample in the early months there were two different con-
29 flicting people on the job. For example, the safety in-
30 spector would visit the job and find an association



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1 inspector. One had authority and one had no authority.
2 There was an overlap that didn't make sense.

3 MR. ESTEY: So from that time on, 1961 or
4 62, or somewhere in that region, you have been wholly in
5 the educational side of safety and not the enforcement
6 side at all?

7 MR. SAMPSON: That is right, sir.

8 MR. ESTEY: Does the Department of Labour
9 run any safety films or seminars or instruction for super-
10 visory people?

11 MR. SAMPSON: I couldn't answer that too
12 knowledgeably. I know they run their own safety seminars
13 for municipal and county inspectors throughout the pro-
14 vince on a regular basis. I can't answer intelligently
15 whether they run courses for supervisors.

16 MR. ESTEY: Do you know if the federal
17 labour department has any safety programme?

18 MR. SAMPSON: I am unaware of them.

19 MR. ESTEY: Moving down your page, you come
20 to the analytical item which went from forty-five hundred
21 dollars in 1966 to one hundred and two thousand for next
22 year.

23 MR. SAMPSON: That is the proposal, sir.

24 MR. ESTEY: What does that department do?

25 MR. SAMPSON: That department was created
26 in the past year, in an attempt to try and learn in ad-
27 vance where the malpractises were in the construction in-
28 dustry that frequency ended up in tragedy. The construct-
29 ion industry is like other industries; perhaps more so.
30 Tradition plays a big part in the construction industry.



1 and you find if there has been a fatality or serious in-
2 jury caused by an unsafe condition, it is one of those
3 things where, if you ask the man on the job, the construc-
4 tion superintendent or the foreman, why wasn't this done
5 or that done, the answer usually is -- and very honestly
6 is -- "We don't do it that way. This is the way we have
7 been doing it for fifty years."

8 There are quite a lot of these conditions
9 and in an attempt to try and head them off, we started
10 to develop this department to study construction sites
11 and study plans in advance, to see whether a construction
12 practise might end up in failure, a human failure.

13 MR. ESTEY: Did I hear you rightly? You
14 study plans in advance?

15 MR. SAMPSON: Yes. Remember this is just a
16 start this year. We started with one engineer on our
17 staff and he would go to contractors, to their work shacks
18 and offices, and sit down and talk to them and find out
19 how things would be done.

20 MR. ESTEY: Is he a civil engineer?

21 MR. SAMPSON: A civil engineer. Our objec-
22 tive was to learn in advance what practice might be used,
23 or is being used in the industry, on the chance lady luck
24 might work for a long time but then might fail. When we
25 found this kind of condition, our purpose and objective
26 was to publish this to the industry to say this practise,
27 while used for fifty years is condemned for these reasons,
28 and this is the way this function should be accomplished.

29 MR. ESTEY: The United States Federal Agency
30 does the same thing in federal contracting. It issues



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1 pamphlets and publications of safety procedures for pour-
2 ing cement, and safe procedures for setting rods, and so
3 on.

4 MR. SAMPSON: I am not too aware of it, but
5 I would assume it did.

6 MR. ESTEY: You get these plans on a volun-
7 tary basis from your members?

8 MR. SAMPSON: This is the objective, but we
9 only started with one man.

10 MR. ESTEY: What about next year?

11 MR. SAMPSON: We plan next year to carry
12 this on. We have worked this year with the chimney con-
13 tractors. This is a relatively small group in the indus-
14 try, from a payroll point of view, but rather a dangerous
15 part of the industry. We have had several fatalities in
16 the construction of high-rise chimneys three or four hun-
17 dred feet high, and we have the problem of how do you get
18 men up and down. They have been using practises for many
19 years and get away with relatively few fatalities, but we
20 work closely with them and there are only seven, eight or
21 nine of those in the province. We are trying to get some
22 kind of regulation or some change in the practise which
23 they use.

24 MR. ESTEY: You are not talking about regu-
25 lations in the sense of persuading the Department of Labour
26 to bring out new legislation?

27 MR. SAMPSON: Yes. In this particular case
28 there were a series of meetings, which ended up with a
29 series of regulations suggested and submitted to the
30 Department of Labour, and forwarded to the Minister of



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1 Labour for consideration as inclusions in any revisions of
2 the Act.

3 MR. ESTEY: These proposals you have passed
4 to the Department, these are not made by the analytical
5 section but the association generally, I take it. You
6 have been making these proposals on an informal basis for
7 some time?

8 MR. SAMPSON: Not too frequently.

9 MR. ESTEY: Will this type of effort be en-
10 hanced and increased by the analytical section employment
11 of professional men?

12 MR. SAMPSON: Hopefully. We are in, like
13 many other people, in a big uncharted area. We are talk-
14 ing people. Human people.

15 MR. ESTEY: Is there any duplication of
16 effort in what you describe, with your work with the civil
17 engineer, is there an overlap with what the Department of
18 Labour do in this same field?

19 MR. SAMPSON: I couldn't answer that too
20 positively. I could say I doubt it, but I couldn't be
21 positive.

22 MR. ESTEY: Let us take a practical example.
23 The bridge that fell in Ottawa. A reinforced concrete
24 bridge collapsed when the concrete was setting. The De-
25 partment of Labour investigated it, the Department of
26 Transport investigated it, the Federal Government investi-
27 gated it and I suppose your analytical department went
28 down to see why the forms fell in?

29 MR. SAMPSON: We are really not involved in
30 this. We went down. Our engineer went down as an observer.



1 It was rather late when we did this and it was all over
2 when he got there.

3 MR. ESTEY: This is the kind of thing you
4 would seek to establish some kind of know how and circu-
5 late to your members, so it won't happen again. Not in
6 the form of a binding regulation, although you might sell
7 it to the Department of Labour, but as a precautionary
8 notice to the contractors, such as you send to the chimney
9 contractors?

10 MR. SAMPSON: That is right.

11 MR. ESTEY: You say it is preventive educa-
12 tion, not obligatory or legislative rules at all?

13 MR. SAMPSON: That is right. We have been
14 working with the silo contractors. There are quite a
15 number of hundreds of silos built every year. Maybe we
16 think the agricultural side of the economy is dwindling,
17 but the silos are getting bigger this way (indicates) and
18 (this way). This again is in effect a chimney construc-
19 tion.

20 MR. ESTEY: Fewer and fewer are being made
21 by the farmer himself, but more by contractors?

22 MR. SAMPSON: That is right. Most are begun
23 by contractors. They want to move in quickly and move out
24 quickly with a substantial profit, and that is what they
25 are in business for, but the question again is how do you
26 get men up and down safely. Those are the kind of factors
27 we are looking for. We have had some fatalities this
28 year in Ontario in silo construction. We are working with
29 these people in an inquisitive and curious way. We are
30 asking, "why are you doing it this way, there has to be



1 a better way." We get all the negatives and try to be
2 positive about it.

3 MR. ESTEY: We are interested in the possi-
4 bility that you are overlapping with the rural county, the
5 municipal inspection and the Department of Labour inspect-
6 ion, and Department of Labour enforcement agencies?

7 MR. SAMPSON: If we find we are overlapping
8 I certainly wouldn't want to encourage that, but at the
9 county inspector level, I may be wrong so forgive me, but
10 at the county or municipal inspector level I think that
11 man's purpose in life is to see that the construction laws
12 are observed. I doubt very much if he has the time to
13 sit down and ask these people to find out what they might
14 be doing wrong. This is quite a time consuming task.

15 MR. ESTEY: You are interested in and, to
16 take a practical example, a reinforced concrete building,
17 it is not whether the building is built in accordance with
18 the filed plans or the building permit, but whether or
19 not the contractor is using the safest manner of, say for
20 example, cutting the rods off on the top of the building?

21 MR. SAMPSON: That is right.

22 MR. ESTEY: The Department of Labour inspec-
23 tors would not be interested so long as the crane was
24 licensed and the area underneath was screened to the public,
25 or so long as they didn't use it over hydro lines or over
26 a certain wind velocity. The Department of Labour is
27 interested in those, but your engineer is interested in
28 whether your association can form a code as to how they
29 move these?

30 MR. SAMPSON: That is right. We get all



1 the chimney contractors, the top personnel together, and
2 we say, "Here is what happens, now why? How did you do
3 it? Why did you do it? Why have you been doing it this
4 way? Surely this is inadequate. Gentlemen, we have to
5 be modern. You have to change your fabrication process
6 and you have to be more conscious of the safety of men."
7 You will get other arguments, yes. They will say, "it will
8 cost more money." We are not interested in money but men.

9 MR. ESTEY: Doesn't the Department of Labour
10 do the same thing every time they investigate a fatality?

11 MR. SAMPSON: I am not too sure they would
12 call all the contractors in. I am not sure.

13 MR. ESTEY: Would you receive reports of
14 claims from the construction industry?

15 MR. SAMPSON: We receive daily from the
16 Workmen's Compensation Board the notices of injury which
17 are claims in our industry, on a daily basis, in our
18 office.

19 MR. ESTEY: What do you do with it?

20 MR. SAMPSON: We put them in a monster, our
21 computer machine, and we are becoming more knowledgeable
22 and smarter as we are learning. We are finding information
23 in a more instant manner. For example here is a monthly
24 report that we should get now, with this information taken
25 from all the Workmen's Compensation Board memos we receive
26 daily.

27 MR. ESTEY: Is that report you are referring
28 to, Mr. Sampson, made by your association or delivered by
29 the Board?

30 MR. SAMPSON: The information comes from the



1 Board. The Board receives the information from the em-
2 ployer. The employer has to report to the Board with our
3 lost time injuries. This comes to us on a daily basis
4 from the Board. At the end of the month, or weekly, we
5 get this information in the manner in which we require it
6 and we send it to a computer organization who, at the end
7 of the month, turn over to us the history and we know
8 instantly, at the end of the month, the total number of
9 accidents and the nature of the injury. We know the cause
10 of the injury. We know the age groups of those who are
11 injured. We know the type of person, labourers, mechanics,
12 and what they are. We know that at the end of September
13 four hundred and ninety-nine labourers were injured this
14 year.

15 MR. ESTEY: What do you do with the report?

16 MR. SAMPSON: This information is turned
17 over immediately to our management counsellors.

18 MR. ESTEY: Do you give that report to the
19 Department of Labour safety section also?

20 MR. SAMPSON: No, sir.

21 MR. ESTEY: What part of your budget do you
22 find the computer cost in?

23 MR. SAMPSON: The analytical department.

24 MR. ESTEY: That is part of the increase
25 for 1967?

26 MR. SAMPSON: Yes, sir.

27 MR. ESTEY: Does the Workmen's Compensation
28 Board's big computer turn out this same information?

29 MR. SAMPSON: No, sir. Not yet. I think
30 the Workmen's Compensation Board, will do this as part of



1 their future operations, and I am sure as soon as they
2 can would perhaps want to do this kind of thing.

3 MR. ESTEY: You contract this out right now?

4 MR. SAMPSON: At the moment, we contract it
5 out.

6 MR. ESTEY: You don't go back to the Board?

7 MR. SAMPSON: At the present time they are
8 unable to handle this. They have many other problems and
9 loads.

10 MR. ESTEY: On the use of the report, you
11 put it back out to the industry through twenty-five to
12 thirty field representatives, the management counsellors?

13 MR. SAMPSON: The management counsellors.
14 We have, for example, the contractor's name and the total
15 number of injuries. We put sort of red flags on them.

16 MR. ESTEY: You ride herd on the contractor
17 who has the highest frequency of accident rating?

18 MR. SAMPSON: After the ones with the great-
19 est number of injuries, and we constantly go after them
20 and we give him a copy. We pull a copy and we say,
21 "What is wrong? Where is it wrong? You have had 'X'
22 number of injuries here from nails puncturing shoes. Are
23 you not insisting your men wear safety shoes?"

24 MR. ESTEY: Somewhere back you mentioned
25 the effect of 86 (6) (A). Do you have a bridge across to
26 that person?

27 MR. SAMPSON: No, we are advised by the
28 Board of those employers who will be, or are going to be
29 notified of double assessment under 86 (6) (A).

30 MR. ESTEY: What do you do when you get that



1 information?

2 MR. SAMPSON: When we get that information
3 we take the worst offenders and say, "you look like you're
4 in the soup."

5 MR. ESTEY: You do the same with that as
6 you do with your book, I take it?

7 MR. SAMPSON: That is right.

8 MR. ESTEY: All a part of your method of
9 field safety education?

10 MR. SAMPSON: And persuasion.

11 MR. ESTEY: Backed up by a double assess-
12 ment quota which hangs over their head, if they don't get
13 into the programme.

14 MR. SAMPSON: This is serious if they are
15 double assessed. They have to take it out of the top
16 drawer. It is too late to put it in a bid price. You
17 can't recover the money. It has a salutary effect.

18 MR. ESTEY: What is the rate these contract-
19 ors pay in assessment. What kind of rates?

20 MR. SAMPSON: We have ten rates, eleven
21 rates.

22 MR. ESTEY: How do they range?

23 MR. SAMPSON: The general average subcon-
24 tractor pays three dollars and fifty cents per hundred of
25 payroll.

26 MR. ESTEY: Do you happen to know the
27 numbers off hand?

28 MR. SAMPSON: Not only off hand. I can give
29 them to you exactly. 736, 744, 753, 809, 744 --

30 MR. ESTEY: 809 through 873?



1 MR. SAMPSON: 809, 827, 836, 854, 839, 864,
2 873 and 943.

3 MR. ESTEY: And 844 I think?

4 MR. SAMPSON: 844, no. That is in our
5 industry but a very minor inclusion.

6 MR. ESTEY: And the rate actually paid runs,
7 Mr. Sampson, in what range?

8 MR. SAMPSON: The average rate?

9 MR. ESTEY: Yes.

10 MR. SAMPSON: I would assume that the aver-
11 age rate is three fifty, because it is the largest part
12 of our membership.

13 MR. ESTEY: Three dollars and fifty cents?

14 MR. SAMPSON: The highest rate is in demo-
15 lition or the wrecking business.

16 MR. ESTEY: Your highest rate is in what?

17 MR. SAMPSON: Wrecking or demolition. That
18 is fifteen percent. Steel erection is twelve percent.

19 MR. ESTEY: Fifteen percent, I take it, on
20 the basis of experience in the wrecking employment rates?

21 MR. SAMPSON: Some time ago the Workmen's
22 Compensation Board broke the records for demolition people
23 away from the general trades, because they are a smaller
24 group and incurred --

25 MR. ESTEY: Incurred large claims and the
26 frequency was high?

27 MR. SAMPSON: Yes, and the Board moved them
28 in a separate area and increased their rate.

29 MR. ESTEY: What do you do in your education
30 work with the demolition people? Do you spend much time



1 with them?

2 MR. SAMPSON: Yes. We do. We work directly
3 with the Department and those people.

4 MR. ESTEY: Do you find the incidence of
5 claims in the demolition field is higher in the big cities
6 than the smaller places, where the buildings are higher?

7 MR. SAMPSON: I couldn't answer that. We
8 are not sophisticated enough yet in the refinements of
9 this. It would be, I would guess, higher in Toronto.

10 MR. ESTEY: We have ^abrief from one in King-
11 ston who says he has always overpaid because he is carry-
12 ing on his back the Toronto and big city contractors, who
13 are on higher buildings and hire more people. His figures
14 support what he says.

15 MR. SAMPSON: I can't voice an opinion that
16 would have any intelligence behind it, sir.

17 MR. CAMPBELL: It is quite possible in a
18 smaller community that somebody would get the job with-
19 out experience, and you would have drastic problems. Some
20 of the well trained demolition contractors down here
21 would do a pretty respectable job. If someone entered
22 into it without experience because there hadn't been that
23 style of work it could create trouble. You just have to
24 be a lot better or you will find you can get into serious
25 trouble quickly.

26 MR. ESTEY: You say there are more factors
27 than the height of the building?

28 MR. CAMPBELL: Oh yes. I would imagine
29 some of the fellows can take down a high-rise with a
30 certain method and do it well.



1 MR. ESTEY: I see. Well then, moving along
2 in your budget you have a substantial item in 1966 of
3 six hundred and twenty-five thousand dollars for adver-
4 tising and public relations, and I take it that is what
5 it says. It is newspaper, T.V. and radio advertising and
6 what else?

7 MR. SAMPSON: Well salaries. We have trav-
8 elling expenses and crusades.

9 THE COMMISSIONER: What is the last item?

10 MR. SAMPSON: Crusades. We tried, gentle-
11 men, this year ^{one} two of what we call construction safety
12 crusades/in the month of May in the City of Toronto. We
13 had the month of May declared construction safety month
14 by the mayor of the city, and we used all the parapher-
15 nalia of a promotion to create attention. We did it
16 jointly with organized labour and we kicked it off at the
17 Inn on the Park, with an audience of over two hundred
18 people of which fifty percent were labour representatives.
19 The labour crusade was done jointly for the month of May.
20 We feel we certainly created attention, but we have no
21 way of knowing whether or not we sold any goods. Only
22 one way, and this is a thin one, the month of May lost
23 time injuries was down over the month of April, down over
24 the month of May a year ago and since the month of May,
25 up until the end of September at this point, there has
26 been a noticeable downward trend in injuries. Nothing
27 startling but a downward trend, maybe fifty to seventy-
28 five to a hundred injuries less per month, with one ex-
29 ception and that is September when we were up fifty. This
30 is one of the things our people would love to believe.



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1 MR. ESTEY: This was jointly with manage-
2 ment and labour?

3 MR. SAMPSON: Right.

4 MR. ESTEY: You don't have any provision
5 for labour on your board of directors?

6 MR. SAMPSON: No. They had nothing to do
7 with the crusade either. We have excellent relations
8 with organized labour. We moved to Ottawa and had a bet-
9 ter opportunity and put on a crusade again with full co-
10 operation of organized labour, but because Ottawa is a
11 smaller community we were able to move into Ottawa in ad-
12 vance on a count and recount basis. We learned eighty
13 percent of the construction in Ottawa was performed by
14 "X" number of contractors so we worked very closely. We
15 got the lost time injuries for the three months prior to
16 May, and we got them a year earlier, and we put on the
17 crusade in Ottawa during the month of May this year, and
18 after the smoke was all over and we went back on our count
19 and recount, we learned we had reduced injuries in Ottawa
20 by forty percent for that month.

21 MR. ESTEY: Which part of the budget does
22 that programme come under?

23 MR. SAMPSON: Advertising and public re-
24 lations.

25 MR. ESTEY: You say you did that with the
26 co-operation of labour in Ottawa. How many unions were
27 connected with your association?

28 MR. SAMPSON: Eighty-five.

29 MR. ESTEY: How do you do it, with trades
30 and labour?



1 MR. SAMPSON: Yes, sir. We are working with
2 the Hamilton Trades and Labour Council for a safety cru-
3 sade in Hamilton, after the turn of the year. We get
4 tremendous support from the trade unions in this area. In
5 Toronto in the month of May, during the safety crusade,
6 because we didn't have this kind of staff we had some,
7 I think, eighty to ninety business agents of the local
8 construction trade unions who went around and put up our
9 posters.

10 MR. ESTEY: Do you ever have any suggestions
11 made to the association that it would be helpful in in-
12 augurating steps to solve joint problems, to have some
13 formal link with the trade people other than you now have?

14 MR. SAMPSON: Suggestions? No, I have heard
15 all kinds of suggestions and some threats, but oh, yes,
16 I have heard it, but whether or not it is a good thing I
17 am not prepared to say. I am a paid employee.

18 MR. ESTEY: Perhaps I should ask Mr. Camp-
19 bell?

20 THE COMMISSIONER: Perhaps it is not a fair
21 question to put to you.

22 MR. CAMPBELL: Mr. Sampson has done an ex-
23 cellent job in everything he has been able to speak to.

24 MR. ESTEY: I put the question --

25 MR. CAMPBELL: The attitude of the Board
26 of Directors of the Construction Safety Association is
27 that they feel they can handle the problem of running a
28 safety association quite well themselves, and their feel-
29 ing is it is part of their own association. They are
30 getting part of their own money back to run the association



1 by those who should be running it.

2 MR. ESTEY: And you get your liaison or
3 relationship of what you think is a successful but albeit
4 less formal way?

5 MR. CAMPBELL: I don't think there was any
6 real attempt on either side of labour and management to
7 actually get out and co-operate and do something until
8 the last couple of years. I can only talk about what I
9 am aware of. The employees of our association went out
10 and I, as a director, have gone out with the word that
11 on the topic of safety we will try to co-operate with any
12 one soul or group, whether management or labour. We have
13 one job and that is to reduce accidents.

14 MR. ESTEY: You are a general contractor?

15 MR. CAMPBELL: No, I am a road contractor.

16 MR. ESTEY: Is this your first term of
17 president?

18 MR. CAMPBELL: It will be the first and
19 last. We are elected one term at a time.

20 MR. ESTEY: I want to dwell for a moment,
21 while you are on your feet, I agree you are the one to
22 answer, you have been vice-president?

23 MR. CAMPBELL: Yes, sir.

24 MR. ESTEY: And a director for some time?

25 MR. CAMPBELL: For three years.

26 MR. ESTEY: How many directors do you have?

27 MR. CAMPBELL: Fifty-seven.

28 MR. ESTEY: They are scattered geographically?

29 MR. CAMPBELL: They are first of all scat-
30 tered through the rating groups of the companies, right,



1 and secondly geographically.

2 MR. ESTEY: Through the rates groups under
3 the 21, 22, 23 class?

4 MR. CAMPBELL: Yes.

5 MR. ESTEY: Do you break them down so the
6 mechanical subcontractors have so many directors and the
7 electrical have so many directors?

8 MR. CAMPBELL: Yes. In other words we are
9 trying to get the greatest spread possible.

10 MR. ESTEY: And the road builders would
11 have some representation on the board?

12 MR. CAMPBELL: Yes.

13 MR. ESTEY: General contractors would pre-
14 dominate?

15 MR. CAMPBELL: The general contractors and
16 what is classified sub-trades are the predominate direc-
17 tors.

18 MR. ESTEY: Do you have any sub-associations?
19 We heard in the I.A.P.A., they have nine of them. Do you
20 have sub-groupings, so the electrical can get their
21 training without being mixed with the plumbers?

22 MR. CAMPBELL: We have specific films and
23 courses given to sub-groups, but no sub-groups in the
24 organization.

25 MR. ESTEY: The reason I ask you, as a rank
26 outsider, it would seem to me that the journeyman elec-
27 trician has little in common in safety procedures with a
28 tile layer. One is dealing with lethal doses of electri-
29 city and the other is down on the ground floor in a build-
30



1 ing in a different set of circumstances. You lump those
2 together for your safety courses, do you?

3 MR. CAMPBELL: That is right.

4 MR. ESTEY: But you have specialist train-
5 ing in course "A", "B" and "C", the electrical people
6 getting different films than the other people get when
7 you complete your different courses?

8 MR. CAMPBELL: That is right.

9 MR. ESTEY: There is no pressure, no sug-
10 gestion, no movement to organize sub-associations to group
11 together, those who have skills more or less in common?

12 MR. CAMPBELL: I am not aware of any pres-
13 sure from any group of contractors. Let us put it that
14 way.

15 MR. ESTEY: You read in the paper electri-
16 cians get electrocuted so they have to wear safety devices
17 unique to their trade. They have to know certain things
18 about the trade, particularly how they step off a grounded
19 or ungrounded vehicle and a terazzo floor layer would
20 never have to know that, but the electrician if he forgets
21 it is dead. It is not against the law to step off in any
22 way, that is your right?

23 MR. CAMPBELL: That is right.

24 MR. ESTEY: Why don't you organize them
25 separately from someone else?

26 MR. CAMPBELL: We do organize them separately,
27 but not under pressure. I will give you a case in point.
28 One of the electrical contractors is Ainsworth in the
29 city, rather a large organization. We have had several
30 educational courses strictly with their personnel, and



1 purely with the whole concept of construction safety in-
2 cluding the Construction Safety Act and its requirements,
3 as well as instruction to them on the electrical sites.

4 MR. ESTEY: So when the need of informing
5 a certain group arises you beam it to the audience?

6 MR. CAMPBELL: Yes, sir.

7 MR. ESTEY: And the same applies to say,
8 refrigeration?

9 MR. CAMPBELL: That is right, the cement
10 masons and brick layers.

11 MR. ESTEY: The steel riggers?

12 MR. CAMPBELL: That is right. We are form-
13 ally under Workmen's Compensation classifications. Class
14 21 represents road builders, sewers and airport tarmac
15 builders. "23" is steel erection or the iron working in-
16 dustry, and Class 24 is the general contractor and sub-
17 trades. These three were separate associations. In the
18 last couple of years through the direction of the direc-
19 tors, we have organized them under one. We don't have
20 three separate meetings, three separate boards of direc-
21 tors, three separate operations, they are all under the
22 one association and we dropped the "s" from the word
23 associations to association.

24 MR. ESTEY: What about the area group we
25 have seen in the mining industry? They have geographic
26 units so they can bring their people together more easily
27 and frequently and they have more in common. Do you have
28 that?

29 MR. CAMPBELL: No, sir. We don't have
30 regional offices, we have area directors but not in a



1 formal way.

2 MR. ESTEY: I see that in the construction
3 trades the employers grouped together in an almost end-
4 less number of associations, and the construction associa-
5 tion is simply a federation of associations and you have
6 electrical contractors or what have you, everybody down
7 to grave digger contractors?

8 MR. CAMPBELL: That is right.

9 MR. ESTEY: And all lumped together in one
10 association?

11 MR. CAMPBELL: All in the one bag.

12 MR. ESTEY: You have fifty-seven directors,
13 how often do they meet?

14 MR. CAMPBELL: A minimum of twice a year
15 for a general directors' meeting; a minimum of three
16 times a year on the general council meetings and the
17 management directors' meeting is monthly, and sometimes
18 more.

19 MR. ESTEY: You named three groups your
20 by-laws cover. The directors who run the association
21 and a larger group that meets less frequently and the
22 big group of directors who number fifty-seven?

23 MR. CAMPBELL: Right.

24 MR. ESTEY: Do you ever have a meeting of
25 the whole membership?

26 MR. CAMPBELL: You mean the twenty thousand?
27 No, sir.

28 MR. ESTEY: Do you ever have a convention?

29 MR. CAMPBELL: No, sir. We have an annual
30 meeting but not a convention.



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1 MR. ESTEY: At the annual meeting, how many
2 people attend?

3 MR. CAMPBELL: Sixty to seventy to eighty.

4 MR. ESTEY: That is the one that elects
5 the directors?

6 MR. CAMPBELL: That is right, but we legally
7 have to circulate the twenty thousand members every year
8 with proxies and the details. We get back a maximum of
9 twelve to fourteen hundred, of which perhaps fifty to
10 sixty percent aren't legally properly attested to or
11 filled out.

12 THE COMMISSIONER: They have sought to fill
13 them out but haven't done it correctly?

14 MR. CAMPBELL: Right. They haven't the
15 company seal on, or the right person hasn't signed it or
16 that sort of thing

17 MR. ESTEY: One of your reasons for this
18 method of operating, I take it, is that in your member
19 associations and there must be thirty of them, they all
20 have their annual meeting and the directors go to those?

21 MR. CAMPBELL: That is right.

22 MR. ESTEY: Does your safety association
23 conduct films or seminars of some kind?

24 MR. CAMPBELL: Yes, sir. We are involved
25 in various construction trade groups.

26 MR. ESTEY: Area groups inside the associa-
27 tion?

28 MR. CAMPBELL: Yes, sir.

29 MR. ESTEY: That comes under the P.R.,
30 budget also?



1 MR. CAMPBELL: Yes, sir.

2 MR. ESTEY: And the last part of your P.R.,
3 budget. How much of the advertising and public relations
4 six hundred and twenty-five thousand dollars would go in-
5 to the meetings under the public relations heading? How
6 do you break that down?

7 MR. CAMPBELL: We don't break it down, per se.

8 MR. ESTEY: Perhaps it would be easier if I
9 put it this way. How much do you spend on radio and T.V.?

10 MR. CAMPBELL: What we spend on radio and
11 T.V. this year? Twenty-one thousand dollars in radio and
12 four hundred and eight thousand dollars on T.V.

13 MR. ESTEY: And the newspaper?

14 MR. CAMPBELL: The newspaper for 1966,
15 forty-four thousand dollars. That is for newspapers and
16 trade papers.

17 MR. ESTEY: Posters?

18 MR. SAMPSON: We don't have it broken down
19 separately as such. We have that in printing and publish-
20 ing.

21 MR. ESTEY: Printing and publishing come
22 under the same advertising budget?

23 MR. CAMPBELL: Part of it.

24 MR. ESTEY: Would part of it be in the office?

25 MR. CAMPBELL: Yes.

26 MR. ESTEY: Other than newspaper, radio and
27 T.V., do you have anything in the six hundred and twenty-
28 five thousand odd item that one would class under the
29 heading of advertising?

30 MR. CAMPBELL: Under that six hundred and



1 twenty-five thousand dollars, sir, we have T.V. which is
2 advertising.

3 MR. ESTEY: To shorten it up, you have four
4 hundred and seventy-five thousand in radio, T.V. and
5 newspapers. The other one hundred and fifty thousand dol-
6 lars is made up with public relations work?

7 MR. CAMPBELL: Also, sir, we have outdoor
8 billings. That could be called advertising. This is
9 fifty-seven thousand dollars.

10 MR. ESTEY: That is what I was asking about,
11 the posters. That is what you call the outdoor billings?
12 Those are pictures?

13 MR. CAMPBELL: No, we are talking twenty-
14 four sheet panels.

15 MR. ESTEY: You mean the E.L. Ruddy signs?

16 MR. CAMPBELL: Yes.

17 MR. ESTEY: Fifty-seven thousand dollars
18 for that?

19 MR. CAMPBELL: Yes. That then gentlemen is
20 the item you might call strictly advertising.

21 MR. ESTEY: Let us concentrate on T.V.,
22 four hundred and eight thousand dollars. I take it you
23 funnel that mainly through the T.V. stations of southern
24 Ontario?

25 MR. CAMPBELL: All Ontario. We use every
26 T.V. station in the province.

27 MR. ESTEY: You wouldn't spend as much in
28 Port Arthur as on C.F.T.O.?

29 MR. CAMPBELL: No, sir.

30 MR. ESTEY: Mostly in southern Ontario



1 stations?

2 MR. CAMPBELL: Largely.

3 MR. ESTEY: And you use all the T.V. stat-
4 ions in the province?

5 MR. CAMPBELL: Yes, sir.

6 MR. ESTEY: And you have to pay for that
7 time, I take it?

8 MR. CAMPBELL: Yes, sir.

9 MR. ESTEY: Is some of it given to you free?

10 MR. CAMPBELL: We get approximately dollar
11 for dollar.

12 MR. ESTEY: How do you spend it? Do you
13 have an advertising agency?

14 MR. CAMPBELL: Yes, sir. We produce T.V.
15 commercials within the industry for the purposes we
16 jointly feel are what we should be using, and we buy time
17 on the station and try to get prime time.

18 MR. ESTEY: Are those commercials mainly
19 one minute or thirty seconds?

20 MR. CAMPBELL: We have sixty seconds and
21 twenty seconds.

22 MR. ESTEY: Do you have access to this kind
23 of information from the United States Safety Associations,
24 or Quebec, or other provinces?

25 MR. CAMPBELL: No, sir. We are the only
26 people who ever really went into the field. We get free
27 time from the border United States stations' T.V. chan-
28 nels, because we supply them with our commercials. They
29 use them but don't charge for them.

30 MR. ESTEY: Why would they run those for



1 you for nothing?

2 MR. CAMPBELL: Because they can't get any-
3 thing like it in the United States. Nobody produces this
4 kind of message.

5 MR. ESTEY: Do they have them made by the
6 Construction Safety Association of Ontario?

7 MR. CAMPBELL: No, sir, the Construction
8 Safety Association produces them.

9 MR. ESTEY: You produce your own strips,
10 that is what you are saying?

11 MR. CAMPBELL: Yes.

12 MR. ESTEY: You engage the talent, the
13 facilities and produce the strip announcements and deliver
14 those to the stations?

15 MR. CAMPBELL: Yes.

16 MR. ESTEY: Do you have any measurement of
17 success or lack of success in those programmes?

18 MR. CAMPBELL: Yes, we have.

19 MR. ESTEY: You do a survey?

20 MR. CAMPBELL: That is right, and they tell
21 us we have a ninety percent awareness throughout the
22 province of the construction safety problem from our T.V.
23 advertising. Ninety percent of the people in the province
24 are aware of it. Then we have further refinements, break-
25 downs of what they might remember, specifically they might
26 mention hard hats, safety boots, or a man on a steel beam.
27 We have a breakdown of what they remember.

28 MR. ESTEY: Who made that survey?

29 MR. CAMPBELL: Canadian Facts.

30 MR. ESTEY: How long ago?



1 MR. CAMPBELL: We had one prepared this
2 year and one a year ago.

3 MR. ESTEY: Would you have a copy of a
4 survey for this year available?

5 MR. CAMPBELL: No, sir, I don't have one
6 available with me.

7 MR. ESTEY: That is all right. I am re-
8 minded, would you be good enough to send us one of the
9 safety manuals just coming off the press? Would you do
10 that?

11 MR. CAMPBELL: Yes, sir. As a matter of
12 fact we have that down on the pad to make sure you did
13 receive it.

14 MR. ESTEY: Let us go back to T.V. You did
15 a survey three years ago and since then your budget for
16 T.V., has it increased or decreased?

17 MR. CAMPBELL: We started off in 1963 with
18 a forty thousand budget for television and radio, in
19 1963. In 1964 we moved that up to two hundred and fifty
20 thousand dollars.

21 MR. ESTEY: You hired an agency this time
22 and went after it in a big way?

23 MR. CAMPBELL: Yes, sir. In 1965, as I
24 recall it, our T.V. and radio budget was approximately
25 the same, somewhere in the area of four hundred and twenty-
26 five thousand to four hundred and fifty thousand dollars.
27 In 1966 it is four hundred and eight thousand dollars
28 and our proposal for 1967 is three hundred and fifteen
29 thousand dollars. Our cut back is not because we feel
30 T.V. is not doing a job, but for other reasons.



1 MR. ESTEY: What would the reasons be?

2 MR. CAMPBELL: We feel in the last three
3 years the construction industry has appropriated or spent
4 considerable sums of money in creating an awareness of
5 the safety problem, which has been a benefit to other
6 groups other than construction. The contractors feel
7 that they have created an awareness and that we would
8 like to try and concentrate next year on more of a moti-
9 vating operation.

10 MR. ESTEY: I suppose it is fair to say
11 one of the weaknesses of the use of T.V. is you share it
12 over the general public, where you are aiming it at part
13 of it?

14 MR. CAMPBELL: From the construction point
15 of view there is a tremendous amount of waste circulation,
16 but it isn't waste from a six and one-half million popu-
17 lation point of view.

18 MR. ESTEY: You are also benefiting the
19 I.A.P.A., members and so on?

20 MR. CAMPBELL: And the whole spectrum of
21 the safety problem.

22 MR. ESTEY: How much co-ordination is there
23 of the safety associations for their television adver-
24 tising programming, do you share the costs?

25 MR. CAMPBELL: No.

26 MR. ESTEY: Do you have any institutional
27 ads all beamed at construction workers?

28 MR. CAMPBELL: Yes, sir. We have been
29 selfish in that respect but we have developed our material
30 to try and attack our particular problem with two hundred



1 odd thousand workers in our industry.

2 THE COMMISSIONER: What was your estimated
3 1967 figure?

4 MR. CAMPBELL: For T.V., three hundred and
5 fifteen thousand dollars.

6 THE COMMISSIONER: Three hundred and fif-
7 teen thousand?

8 MR. CAMPBELL: Yes, sir.

9 MR. ESTEY: I should have asked you, this
10 is mainly evening television announcements you are buying?

11 MR. CAMPBELL: Largely.

12 MR. ESTEY: You have no programmes?

13 MR. CAMPBELL: No, sir.

14 MR. ESTEY: The C.B.C. doesn't conduct any
15 safety programmes that you might bring about by persuasion
16 or otherwise?

17 MR. CAMPBELL: No, sir. We have worked on
18 these people a number of times trying to get a piece of
19 the total Canadian dollar for our province and industry,
20 but we have not been successful.

21 MR. ESTEY: Moving over to something else,
22 we have heard a great deal of discussion, I don't say it
23 one way or the other, but it is a fact we have heard a
24 great deal of discussion about the problems of labour
25 union members working in casing work, but under pressure.
26 You mentioned that in a general way a few minutes ago
27 about the kind of contractor who needs some special train-
28 ing, and I take it you have safety construction courses
29 for supervisory personnel in that field?

30 MR. SAMPSON: Yes, sir.



1 MR. ESTEY: Is it administered in the same
2 way as your general safety programme with some 'on the
3 job lectures' and demonstrations?

4 MR. SAMPSON: No. We have not had any 'on
5 the job' work in that area and it may be the smallest
6 piece of our total effort, but we are equipped and able
7 to and have done some of this kind of work, and over the
8 period of years we have had people on our staff who have
9 had experience in casing type of work.

10 MR. ESTEY: I take it some of these people
11 who had that experience were those who gave the courses
12 to supervisory personnel?

13 MR. SAMPSON: No. Mostly safety counsell-
14 ors visiting job sites.

15 MR. ESTEY: What do you do now in the field
16 of casing contracts?

17 MR. SAMPSON: The only thing we will do is
18 if we can work directly with the members of Class 23, the
19 sewers, and we mean contractors, we will work with their
20 supervisory staff and any workmen we can corral into
21 courses.

22 MR. ESTEY: I see. Perhaps if I might go
23 back, perhaps you have something to say on the whole
24 business of posters. You turned them out on a multi-
25 lingual basis. You don't confine them to the English
26 language. How do you distribute them and effectively get
27 them put up?

28 MR. SAMPSON: I would just like to make sure
29 what we mean when we say "posters" and turn them out multi-
30 like
lingually. I would/it to be known we have quite a number



1 of posters. We cut back considerably on the quantity of
2 subjects and we don't have all our posters multi-lingual.
3 We have some. Our distribution is a problem but it al-
4 ways has been a problem, and I assume distribution of
5 this kind of material will remain a problem to anybody
6 to try and distribute it. Nobody likes to put up posters.
7 Our distribution is largely done today through contract-
8 ors, through supplying contractors with say ten to twenty
9 or whatever is the number required of our posters. Some
10 of our contractors have safety directors and they visit
11 our office rather frequently to pick up bundles of the
12 material we have. We let them go around and they select
13 whatever they wish, and they are the people to see the
14 posters go up on their projects, but our distribution is
15 far from perfect.

16 MR. ESTEY: This is because of the very
17 nature of construction, isn't it?

18 MR. CAMPBELL: And the very nature of a
19 staff of forty-five people.

20 MR. ESTEY: And the contractor and group
21 employees are nomadic?

22 MR. SAMPSON: Oh, yes we are.

23 MR. ESTEY: The places to get posters put
24 up on some construction sites would not be easy to find?

25 MR. SAMPSON: Places to put up posters are
26 It is a question of physical manpower of getting posters
27 put up. For example Coca Cola, and this company spent
28 lots of money for posters, are always worried about how
29 many are burned and how many are put up.

30 MR. ESTEY: I take it you find posters are



1 a worthwhile part of your programme?

2 MR. SAMPSON: Very definitely an important
3 auxilliary part of the whole programme.

4 MR. ESTEY: They are aimed at the man actually
5 working, not aimed at somebody in control?

6 MR. SAMPSON: They are aimed at the man who
7 gets hurt. This is one of our prime purposes in life. You
8 have over two hundred thousand construction workers and on
9 an average ten percent of them are injured. This is our
10 target, to try and get these men conscious and aware of
11 the right of survival. This is why we have spent so much
12 money in television. We felt we had to get to these people
13 and you can't get to them by knocking on doors. We have
14 had to spend a lot of money on waste circulation, if you
15 will, to try and get to these people.

16 THE COMMISSIONER: I am going to adjourn,
17 Mr. Estey for ten minutes.

18

19

20

21 --- The Commission adjourned
22 for ten minutes.

23

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27 MR. ESTEY: Gentlemen, the remaining
28 questions I have, I perhaps should emphasize I will put the
29 question and you people decide who will answer. Before I
30 leave it, on the question of posters I take it that you
have a variety of targets of interest, as regards your



1 publicity programme. You either are going to the workman
2 or aim it at the supervisor or management. In the case of
3 posters you aim at the workman you told me?

4 MR. SAMPSON: That is true.

5 MR. ESTEY: Obviously everybody has a problem
6 of seeing the posters are put up and in the best place.
7 Having in mind the success you had in your co-operative
8 movement with trade unions in your Ottawa and Toronto cru-
9 sade, do you distribute the posters?

10 MR. SAMPSON: The gentlemen in Ottawa were
11 very helpful -- the business agents of the locals down
12 there -- in accomplishing this, and in Toronto as I said
13 earlier some eighty or ninety business agents in the city
14 volunteered for this job, because we have not the manpower
15 to get around to all these jobs, and the business agents
16 are constantly moving around construction sites and they
17 felt they were in a good position to help us in this respect,
18 and they did an excellent job for us.

19 MR. ESTEY: So I take it there is, in your
20 view of things, a roll to be played in the future in this
21 kind of a programme including the distribution of posters?

22 MR. SAMPSON: Well, sir, we have to have the
23 support and co-operation of everybody. Now the workmen
24 and the unions are playing a very important part. We have
25 got to have the help and support of organized labour and
26 unorganized labour to make a whole apple. This is a neces-
27 sity.

28 MR. ESTEY: Now carrying along this thought
29 of the programme and the audience you aim it at, so far as
30 the newspapers are concerned, your audience perhaps is



1 wider than your posters and you direct part of the newspaper
2 campaign to managers and supervisors?

3 MR. SAMPSON: Yes, sir.

4 MR. ESTEY: And I take it some has to go to
5 the general public because they attend at construction for
6 delivery purposes and so on?

7 MR. SAMPSON: Yes, sir. A couple of years
8 ago we ran a full page advertisement in every newspaper in
9 the Province of Ontario, and aimed at contractors and con-
10 struction workers in the trenching industry. We were
11 getting too many fatalities in cave-ins and damaged people
12 in the trenching industry. We ran a full page newspaper
13 advertisement with a direct appeal to the contractors and
14 construction workers, in which we urged them never to go
15 into a hole or a trench if, in their opinion or their think-
16 ing, it wasn't safe. Our prime interest is saving lives.
17 I don't care how, just so long as we save them.

18 MR. ESTEY: To get on with this line of in-
19 quiry, I have an example of what I want to ask you about.
20 It is an ad in the Globe and Mail of November 1st. It has
21 the name of your association in the bottom. This kind of
22 thing talks about the experience of a contractor going
23 one hundred and seven days without an accident and the sign
24 he has on his project that hard hats and safety shoes must
25 be worn. I take it this says, "do all you can for the
26 workers on the sites." It is not so much aimed at the
27 workmen, but the supervisor and management levels so their
28 employment conforms with the programmes you are supporting?

29 MR. SAMPSON: Yes, sir. There are several
30 facets to a testimonial type of advertisement. It is an



1 effort to shame other contractors into doing a proper job.

2 MR. ESTEY: You give the contractor a fair
3 amount of publicity?

4 MR. SAMPSON: That is right. We are showing
5 what a contractor who will pay attention to safety and pay
6 attention to the man he makes a dollar from, what he can
7 do and what has been done to accomplish this. We are try-
8 ing persuasion.

9 MR. ESTEY: Do you have a policy where you
10 hold some of your contractors up to a reprimand inside the
11 safety association, if they have a relatively bad safety
12 record?

13 MR. SAMPSON: I have had, and several of my
14 people have had, some heated and very stirring discussions
15 with contractors.

16 MR. ESTEY: Does this give rise to staff
17 troubles, bearing in mind the staff works for the directors
18 and bearing in mind they are contractors?

19 MR. SAMPSON: None whatsoever.

20 MR. CAMPBELL: None whatsoever. If we can
21 be fortunate enough to recognize an individual as a board
22 member who isn't holding up his end of the business, and
23 not doing a good job, the directors have gone on occasion
24 to these people including our staff, to try and show the
25 person the ill of his ways.

26 MR. ESTEY: This is a voluntary association
27 where you please yourself by directing your safety campaign
28 at yourselves and I am putting the question frankly, I hope,
29 Mr. Campbell, does this self-inflicted instruction pro-
30 gramme ever cause such dissention in the organization



1 amongst the sponsoring contractors that it gives rise to
2 staff troubles?

3 MR. CAMPBELL: No, sir.

4 MR. ESTEY: Do you have a high turnover in
5 management counsellors amongst the ten men?

6 MR. CAMPBELL: In the educational department
7 and management counselling, we have had quite a high turn-
8 over. There is no place we can go if we want an extra man
9 to go to work for us. There are none available. As we
10 train them, industry has hired them away from us.

11 MR. ESTEY: As safety directors and this
12 kind of thing?

13 MR. SAMPSON: We know we will lose so many
14 to industry and we are happy to say this is where they go
15 at present, rather than lose them through personal conflict.

16 MR. ESTEY: Do you happen to know if your
17 turnover is higher than the I.A.P.A., staff?

18 MR. SAMPSON: I don't know.

19 MR. CAMPBELL: How many people went to in-
20 dustry from our place?

21 MR. SAMPSON: This year four people have gone
22 to industry and I would like to recount a telephone con-
23 versation of five o'clock last night. It has a great bear-
24 ing. A contractor called me last night at five o'clock and
25 said, "I have a new job and I am in bad need of a safety
26 director." I said, "where is the job, what type of job and
27 what is the duration?" To which he replied. I said, "they
28 are not easy to find, there are not too many around. What
29 kind of money are you going to pay this man?" And the
30 answer was, "I will leave that in your hands." I said,



1 "on a previous job what did you pay that man?" He told me
2 He said, "what do you think?" I said, "it depends on the
3 quality of the man and what you would pay or suggest you
4 pay. Number one, are you going to give this man authority
5 on the job?" He said, "oh yes, yes." I said, "are you
6 serious? Are you going to give him authority to look after
7 the workmen on the job? If you are I might get you a good
8 calibre type of man. If not I am not interested a bit. If
9 you are just putting a body on the job who lives up to the
10 act and not give him authority, you might as well have no-
11 body on the job." This is the gist of the conversation
12 last night. This contractor is serious and he is a good
13 fellow. I am hard put to find a man for him. I may talk
14 to some of my own people and maybe one might be interested
15 in jumping on this job. If he is I will have a turnover.

16 MR. ESTEY: Does the safety association enter
17 actively in locating safety engineers for contractors?

18 MR. SAMPSON: It is a regular occurrence but
19 not voluminous.

20 MR. ESTEY: Who hires your staff under the
21 direction of the board of directors?

22 MR. SAMPSON: No, the staff is hired by the
23 paid employees. Myself.

24 MR. ESTEY: You hire your own staff?

25 MR. SAMPSON: Yes, sir.

26 MR. ESTEY: In the chain of command you are
27 responsible to the board of directors of the safety associa-
28 tion?

29 MR. SAMPSON: Yes, sir, I am responsible
30 immediately to my president and the executive council.



1 MR. ESTEY: What is the chain of responsi-
2 bility, if any, back to Mr. Draper, for your organization?

3 MR. SAMPSON: No responsibility. Mr. Draper
4 and myself and people in our organization are in contact
5 on a frequent basis.

6 MR. ESTEY: Your line of supervision is back
7 to your executives of the association?

8 MR. SAMPSON: That is right. Mr. Draper's
9 line of responsibility, as I know it at this point, is
10 direct liaison with myself in my position.

11 MR. ESTEY: One of the reasons I raise the
12 question is that it may be that in some circles, and it is
13 up to us to find out, as to whether there is a conflict
14 of interest of having a safety association run by the
15 people who are encouraged to promote the safety programme.
16 You have a parallel not unlike the commissioner of base-
17 ball not being able to discipline the owners who hire him.
18 I want to make sure you understand it. This is not par-
19 allel in your view?

20 MR. SAMPSON: No, sir. On occasions I have
21 gone out on a limb and feared this is it and I better find
22 myself another job, but that has never happened but the
23 opportunities have been there. Nobody has ever brought
24 any pressure personally upon me to say Sampson, you will
25 lose your job. On the contrary we have had heated words
26 but we have acted like gentlemen and business men and come
27 to some kind of a conclusion.

28 MR. ESTEY: The suggestion has been made to
29 me to follow a line of inquiry more broadly than I did. I
30 want to know whether or not there is a rising frequency



1 of "on the job" instruction of safety in the construction
2 industry now by your association, or whether you still
3 predominately promote your programme through instruction
4 off the job through Toronto facilities and elsewhere?

5 MR. SAMPSON: Largely our educational efforts
6 are off the job.

7 MR. ESTEY: This applies as well to the
8 tunnelling operations, the casing work, as it does to gen-
9 eral contracting, mechanical subcontracting, and that is
10 generally the case?

11 MR. SAMPSON: Yes, sir. We would like to be-
12 come less of a night-time institution and more of a daytime
13 institution, but this is a transitional period. You have
14 a group of contractors who have workmen working for them
15 who have homes in the rest of the province. We deal with
16 the human element. We move in and say we would like three
17 hours of the men's time on your time. Now remember this is
18 a dollar factor. Supposing there are twenty to forty to
19 one hundred men. There you have a dollar factor. Three
20 years ago when we started talking this way we feared we
21 would never get over the hump, but I can report today we
22 are getting more and more contractors saying, "okay, we
23 will close the job down at noon or close the job at four
24 and keep the men to five, and they don't lose an hour of
25 their time." Progress is being made in this area.

26 MR. ESTEY: Whether or not it is adviseable
27 depends on the nature of the site? In some cases you
28 couldn't have "on the job" instruction, you would have to
29 go elsewhere?

30 MR. SAMPSON: That is right.



1 MR. ESTEY: Take this project in Toronto,
2 the T.T.C. subway open cut construction, tunnelling and
3 above the ground and all manner of things, casings being
4 built, foundations, casings, piles and stations above the
5 ground, what do you do there? Obviously you have posters
6 because I have seen them on the sites. Do you have "on
7 the job" safety meetings?

8 MR. SAMPSON: Yes, we have, and we promote
9 after hours, with the contractor, to have tool box talks
10 both in English and in foreign languages, but with all the
11 contractors without exception on the subway, we have worked
12 directly with their men and they have sent their men down
13 to our place for educational instruction. Quite a number
14 of contractors have been involved on the subway and I guess--

15 THE COMMISSIONER: Two of those fourteen
16 teach in Italian you said?

17 MR. SAMPSON: Yes, sir.

18 MR. ESTEY: Do you have courses for their
19 safety directors?

20 MR. SAMPSON: Yes, sir.

21 MR. ESTEY: I take it in major contracts like
22 that they invariably have their own safety directors?

23 MR. SAMPSON: It is a condition of the sub-
24 way. A condition of the T.T.C. that each contractor is to
25 have a safety man or safety director on the subway.

26 MR. ESTEY: And you work through him?

27 MR. SAMPSON: Yes, we do work through him
28 and work directly with the top management. But the safety
29 director on the subway, for example, is a man who should
30 have -- and I say should have -- because there are all



1 kinds of rumours I have heard they haven't got it, but
2 should have complete authority on the subway to see the
3 jobs are provided with safe working conditions for the men
4 and all the necessary things desirable.

5 MR. ESTEY: One of the problems on engineer-
6 ing works of that kind is an opinion of what is the safe
7 procedure?

8 MR. SAMPSON: This is one of the games of
9 life.

10 MR. ESTEY: You would have a lot of engineer-
11 ing competition on which is the better way?

12 THE COMMISSIONER: The other thing is, I
13 suppose, there are a number of different construction com-
14 panies operating?

15 MR. SAMPSON: On the subway, sir, yes. I
16 would guess seven or eight.

17 THE COMMISSIONER: You say a safety director.
18 Do you suggest one safety director in all the companies
19 working?

20 MR. SAMPSON: Do you mean an overall official
21 safety director?

22 THE COMMISSIONER: I suppose when you have a
23 contractor and subcontractor, he has a safety man and would
24 control the subcontractor?

25 MR. SAMPSON: Yes, sir.

26 MR. CAMPBELL: I believe the T.T.C. has a
27 safety supervisor and each contractor is supposed to have
28 a safety director.

29 THE COMMISSIONER: Their safety director has
30 some control over the subcontractors, has he?



1 MR. CAMPBELL: This is the theory I have
2 heard. Mr. Gallagher in the back of the room might know.

3 MR. GALLAGHER: What was the question?

4 MR. ESTEY: The question is whether or not
5 there is an overall safety director of the T.T.C. in charge
6 of the whole subway programme, or a safety director for
7 each of the seven or eight contractors.

8 MR. GALLAGHER: As far as I know, there is
9 no overall safety inspector at all, and as far as the
10 safety inspectors of the company is concerned they are
11 completely under the domination of the contractors and
12 completely inadequate; and I feel very strongly that the
13 presentation this morning is not very accurate. You will
14 excuse me.

15 MR. ESTEY: Well, Mr. Gallagher, thank you
16 very much. One thing I wanted to ask you about is the
17 safety director question of the subway. I raise it because
18 it is an engineering work with a variety of things. The
19 work is largely done by subcontractors but it looks like
20 a general contractor, but in fact a subcontractor, is that
21 true?

22 MR. SAMPSON: I think, generally.

23 MR. ESTEY: Is that why the subcontractor
24 has a safety director to make the subcontractors conform?

25 MR. SAMPSON: The situation as I know it is
26 the general contractor has to have a safety man on the job.
27 Now the general contractor is responsible for the behavior
28 of the subcontractor safety wise, who come in on his job.
29 Therefore the safety man for the general contractor has
30 jurisdiction, or should have jurisdiction, over the sub-



1 contractors and how they work safety on that particular
2 job, because in the final analysis the general contractor
3 is the man that can be held responsible.

4 THE COMMISSIONER: When you say the "general
5 contractor" has to have a safety man, are there some regu-
6 lations that require it?

7 MR. SAMPSON: Yes, the T.T.C. have this
8 written into the contract.

9 THE COMMISSIONER: It isn't required under
10 any construction safety act or anything?

11 MR. SAMPSON: No, sir. Not to my knowledge.

12 THE COMMISSIONER: You are talking about a
13 particular job and that is the T.T.C. job?

14 MR. SAMPSON: Yes, sir.

15 THE COMMISSIONER: I see, thank you.

16 MR. ESTEY: These discussions seem difficult
17 to follow. Let us take the T.T.C. job. What do you do
18 and what is, you hope, an effective safety programme? How
19 do you reach the subcontractors?

20 MR. SAMPSON: Our management counsellors for
21 example. They are allotted "X" number of contractors and
22 they work directly with the contractors and try to encour-
23 age and scare up the workmen from those contractors to
24 attend safety educational courses, either at our offices
25 here or in motels throughout the city or on the subway.

26 MR. ESTEY: So you would have the same con-
27 dition operating with the casing drilling group in the sub-
28 way, as you would have with the steel riggers on the big
29 bank building?

30 MR. SAMPSON: That is right. The principle



1 is the same.

2 MR. ESTEY: And whatever kind of
3 contractor makes no difference to you?

4 MR. SAMPSON: No, the principle is an over-
5 all principle, that is at this point.

6 MR. ESTEY: Either of you may wish to answer
7 this. Your association has a representative on the Ontario
8 Labour Safety Council?

9 MR. SAMPSON: Yes, sir

10 MR. ESTEY: Is that your president, Mr.
11 Campbell?

12 MR. SAMPSON: The past president.

13 MR. ESTEY: And he serves on the council for
14 one year?

15 MR. SAMPSON: It is two years I understand
16 now.

17 MR. ESTEY: Well then, does your association
18 take an active part in the operations of this labour safety
19 council?

20 MR. SAMPSON: I won't say an active part.
21 Our past president is one of the members of the labour
22 safety council. We don't become actively engaged in the
23 labour safety council. We attended a conference a month
24 ago at the lecture. There was another one in Kingston at
25 the end of November. We work in conjunction with the
26 Workmen's Compensation Board with Mr. Draper in this con-
27 nection, but apart from that we have no active participation.

28 MR. ESTEY: You say in a letter of August
29 3rd, "the recent creation of the Ontario Labour Safety
30 Council, chosen as an advisory council to the Minister of



1 Labour, is commencing to function in a positive way." Can
2 you explain that?

3 MR. SAMPSON: Well, for example at the Lake-
4 head at the Minister's conference, there were some two
5 hundred people drawn together there, and I had a distinct
6 feeling that for the first time there were two hundred
7 people involved in this whole sphere, who first got to
8 know each other better and became acquainted with the broad
9 aspects of the whole problem. In the workshop period of
10 that conference the preponderance of emphasis was placed
11 upon the need for education in the whole safety field.
12 There was an awful lot of work and effort done at this
13 conference and I am sure the one in Kingston will even be
14 better, because we will have ironed out some of the bugs
15 in the first one. There is a group of people now more
16 likely to become united down the road towards a concerted
17 effort on the whole safety problem. I think the Minister's
18 Safety Conference and the Ontario Labour Safety Council
19 who to my knowledge have a group of very able people on it,
20 cannot help but become a very effective advisory group to
21 the Minister.

22 MR. ESTEY: Thank you very much, Mr. Sampson.

23 Mr. Commissioner, we have Mr. Legge, the
24 chairman of the Workmen's Compensation Board with us, along
25 with some of his staff, for the purpose of discussing gen-
26 erally some of the larger topics which have arisen in the
27 course of our hearing, and while it is twenty after twelve
28 I think we can helpfully get on with this at this time.

29 Mr. Legge, have you a formal brief to pre-
30 sent? I don't suppose the lecturn has any value if you



1 wish to sit down, and if you want your staff to sit with
2 you it might be more convenient.

3 Mr. Legge, we have been dealing as you know
4 with forty odd briefs, and heard fifty or sixty people on
5 many facets of the statute you administer through your
6 Board, and we have had also I might point out in passing,
7 the help of the Deputy Minister of one department of the
8 government, and a Chief of the Department of Mines, and
9 perhaps other representatives of government. We have also
10 had the assistance of a long number of presentations from
11 your treasurer Mr. Kerr, who is active in this matter, and
12 the director of medical services. So this morning, unless
13 you wish to get into it, we are not so concerned with the
14 matters of bits and pieces but rather the general issues.

15 Now, out of these discussions have come a
16 number of things which give rise to some questions in our
17 mind to see how the machine works. One is this. You have
18 a three-man board administering the functions of the Work-
19 men's Compensation Act. You are the chairman and we have
20 heard you have a vice-chairman and a board member. Can
21 you enlighten us how in fact you operate? Do you, as the
22 chairman, allocate areas of operations to the other two
23 members and do you yourself concentrate on some part of the
24 administration?

25 MR. BRUCE LEGGE: The Workmen's Compensation
26 Board is a corporate body under the Act, and therefore it
27 is not divided into three parts, but in a sense is a cor-
28 porate presidency. When the Board was small it was pos-
29 sible to allocate areas of responsibility, as you have
30 suggested, as for example the medical commissioner could



1 exercise surveillance over the medical operation. The
2 vice-chairman could exercise over-lordship of the claims
3 department. The chairman could deal with the safety
4 associations and in that specialized way it could be done.

5 Now that the Board is so large and the case
6 load is so heavy, it must have expert management and ob-
7 viously, if it were divided up by channels of communication
8 to various members of the Board, rather than the Board
9 acting as a corporate presidency, I would specialize in
10 business management, the legal side of it, and Dr. Steele
11 would do the medicine and the vice-chairman would do the
12 claims. This would leave an important area with no one
13 looking after it, or several areas with no one specific-
14 ally concerned with it. So we have laid out a principle
15 officer system, or corporate vice-presidency, where the
16 principle officers are responsible for the main line ac-
17 tivities, the chief medical officer for medicine, the
18 general council for decision making. The claims department
19 has Mr. Kerr as their principle officer and that sort of
20 thing, and they report to the Board in a formal way.

21 The Board gives direction to the principle
22 officers but the Board does not interfere in the day to
23 day operations of the principle officer's duty.

24 THE COMMISSIONER: You speak of the volume
25 of work. How many claims a year do you get or handle?

26 MR. LEGGE: Well, my Lord, the prognostication
27 for 1966 will be of the order of four hundred thousand
28 claims, and it might be helpful to you that in 1956 it was
29 the order of two hundred and fifty thousand claims.

30 THE COMMISSIONER: What was the actual number



1 in 1965?

2 MR. LEGGE: In 1965 the precise number was
3 of the order of three hundred and fifty-nine thousand.

4 THE COMMISSIONER: I saw a statement of yours
5 some place or another about how many compensation cheques
6 a day went out of our office. What was that figure?

7 MR. LEGGE: Mr. MacDonald would have to give
8 you that figure my Lord. I can tell you in a busy day
9 eighteen hundred new claims can come in.

10 MR. ESTEY: I think we heard it was a poor
11 day if you didn't get fifteen hundred?

12 MR. LEGGE: I think that is right.

13 MR. ESTEY: In this tremendous volume of
14 work going through the Board, I take it, from listening
15 to the description from your staff members, that you could
16 with some realism divide your functions into three parts.
17 The executive works and runs it as a business with a board
18 of directors. Do you have regulatory or legislative func-
19 tions you have to perform, possibly legislation under the
20 Act, to discharge some of your responsibilities? We heard
21 some considerable discussion of your quasi-judicial function
22 -- perhaps -- constitutionally. You have already described
23 your executive function as being in charge of housekeeping
24 and overall operation of the Board's purposes. On your
25 legislative or rule making side, I take it -- and we have
26 seen these are all subject to the approval of the Lieut-
27 enant-Governor in Council -- this is a function you dis-
28 charge on occasion but is now largely confined to amend-
29 ment and up-dating your regulations?

30 MR. LEGGE: That is correct.



1 MR. ESTEY: Such as first aid -- we heard a
2 lot of discussion on the first aid regulation change not
3 long ago to adjust to the new condition -- did you hold
4 any hearings or anything of that kind in reaching a de-
5 cision on your regulations?

6 MR. LEGGE: We have not since my advent,
7 but it would not be precluded. We have hearings for al-
8 most every conceivable subject. We have directors of
9 safety associations, applications from labour unions and
10 we find it a very effective way of getting the other
11 person's point of view. We could have, but we haven't
12 had any in my time.

13 MR. ESTEY: The occasion has not arisen with
14 contentious legislation as yet?

15 MR. LEGGE: Not yet.

16 MR. ESTEY: On the appeal side the details
17 have been described to us. I notice in one Royal Com-
18 mission out west, the comment was made they did not think
19 they needed the four layer construction we have in Ontario,
20 that is the Appeal Tribunal in the field. I take it from
21 your viewpoint, with a great mass of claims that come in,
22 the function of the Board and the functions of the three
23 men on the Board would be seriously impeded if you had to
24 devote a substantial part of your time handling appeals?

25 MR. LEGGE: I agree with that assumption.
26 I agree with the finding of Mr. Justice Bird it is not
27 needed in British Columbia, which does only twenty percent
28 of this Board as to actual adjudication of appeal.

29 I think it is very important that the Board
30 exercises its responsibility with knowledge. I don't



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1 think you can sit as an administrative tribunal, which is
2 the ultimate appeal in claims, if you do not know how
3 people are treated and how everything is done in the Board.
4 If otherwise, it would be better done in court. As an
5 administrative tribunal you must know and have notice of
6 what goes on in the compensation world. We do have that
7 and I think it is important that the chief judicial people,
8 the people with the burden of responsibility of the Board,
9 as a hospital rehabilitation agency and as a fund paying
10 organization do have this.

11 MR. ESTEY: As far as the Board appeals are
12 concerned, that is those heard by the Board, we heard you
13 have a quorum of two, the secretary is there and acts as
14 advisor to the Board and has a function to play in the
15 hearing. What fraction of the claimants appealing to the
16 Board itself would be represented by somebody?

17 MR. LEGGE: I would say approximately eighty
18 percent, and in this order they would be represented most
19 numerically by union leaders, secondly by lawyers and
20 thirdly by parliamentarians and then there is a small group
21 of relatives and clergymen, and only twenty percent who
22 have no form of representation at the field tribunal and
23 appear before the Board.

24 MR. ESTEY: In the course of this hearing
25 the representative has the right to speak and discuss the
26 matter?

27 MR. LEGGE: Oh, absolutely.

28 MR. ESTEY: And if the matter is heard, do
29 you always hand down written decisions or reasons, or how
30 is it handled?



1 MR. LEGGE: Again I can only speak for the
2 last two years. Certainly we now follow all the require-
3 ments to cut administration and procedure as outlined in
4 the Gordon Commission, the Franks Commission in England
5 and what Judge Landis said in the United States. Cases
6 are decided on the evidence and reasons given. Every time
7 there is a rejection of the case the applicant or injured
8 workman is told of his right to appeal. He has instant
9 notice.

10 THE COMMISSIONER: What percentage in the
11 end -- what percentage of cases are rejected?

12 MR. LEGGE: On the basis of last year, my
13 Lord, and last year there would be three hundred and sixty
14 thousand cases if my recollection serves me, in the order
15 of fourteen thousand out of the three hundred and sixty
16 thousand. It is a very minute proportion.

17 THE COMMISSIONER: What percentage does that
18 amount to?

19 MR. LEGGE: In the order of four percent.

20 MR. ESTEY: That would include as a claim,
21 medical claims only, as well as lost time claims?

22 MR. LEGGE: Yes. We take the view, of course,
23 that a claim isn't a statistic. A medical claim is really
24 just as important in that deciding qualities be required
25 as any other claim. So we try to teach the doctrine,
26 "behind every claim there is a man in this file, and it
27 has to be not a statistic but a real problem in which people
28 are concerned." If you don't get this in the staff of the
29 Board you would have a computer type of human being who
30 were working with statistics. The people on our staff



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1 are made to feel this.

2 MR. ESTEY: I take it the medical aid claims
3 only would not have the frequency of appeal that the lost
4 time claims have?

5 MR. LEGGE: No. There is a special section
6 as you heard for dealing with that type of claim.

7 MR. ESTEY: Turning, if I may for a moment,
8 to your facilities. We heard a discussion by Mr. Mac-
9 Donald and others of your branch offices, and sub branch
10 offices, from what has gone on so far in this age of high
11 speed communications, it is still practical to centralize
12 the decision making in the headquarters in Toronto?

13 MR. LEGGE: Not only practical, but almost
14 imperative. If you are going to have equality in every
15 case on the order of three or four hundred thousand cases,
16 you must have uniformity of decision making. If you do
17 decision making on a decentralized geographic basis it
18 would be very hard to have uniformity, fairness and equal
19 expertness in all the districts. I know no large decision
20 maker, particularly the pension commission, the veterans'
21 affairs and the insurance companies, I know of no large
22 decision makers of this order who decentralize the decision
23 making. There are, of course, many advantages of a public
24 relations and information giving nature to be obtained
25 from district offices, if wisely sited and properly staffed.
26 Then there is the rehabilitation function, of course. A
27 rehabilitation officer working in a district can be known
28 to the employers in the district and the union leaders in
29 the district and, therefore, can in a sense serve a person
30 who needs a job better than as a stranger in the district.



1 There is a useful rehabilitation function in the districts.

2 MR. ESTEY: I take it that a prime reason
3 for having a district office would be rehabilitation and
4 dissemination of information?

5 MR. LEGGE: Yes, it is of no importance
6 in decision making. It is good for information getting
7 and giving organization.

8 MR. ESTEY: On the question of facilities,
9 we have heard the comment that you have the one large
10 rehabilitation centre, or hospital, in Toronto; and that
11 is a facility for men only, I think somebody said. I take
12 it the explanation for that is the incidence of required
13 physical rehabilitation is much higher and is mostly male
14 not female and you don't have the demand as yet?

15 MR. LEGGE: That is obviously part of the
16 answer to the facility being primarily men. Only the
17 Board doesn't rely on the hospital and rehabilitation
18 centre as the only organization of good treatment and
19 rehabilitation. We pay for services wherever available,
20 in the major cities and this sort of thing. It isn't al-
21 ways feasible to -- there are only four thousand cases a
22 year at the hospital. These are the most difficult ones,
23 the people who have been through the teaching hospitals
24 and other rehabilitation agencies and that sort of thing,
25 and now demand or require, if they are to be rehabilitated,
26 a very specialized service. As for women, this could be
27 provided at the Toronto Rehabilitation Centre here, for
28 example, or some place in Ottawa or Hamilton and if the
29 service is required we would pay for it. We would provide
30 an equal rehabilitation service although it is not pro-



1 vided at Downsview.

2 MR. ESTEY: It is true, of a great number of
3 functions including the contract for services, is established
4 in your office?

5 MR. LEGGE: The doctrine of choice and re-
6 ferral in the local area follows that line completely,
7 yes.

8 MR. ESTEY: If I might change the subject,
9 Mr. Legge, I will get to accident prevention. We have
10 heard of the associations and how they operate. I was
11 wondering if you have some light you might throw on the
12 value of these associations in recent years, particularly
13 since you became chairman two years ago?

14 MR. LEGGE: Yes, I agree the teaching advice
15 of accident prevention is a voluntary process, and as
16 people know more and more about the psychology, background
17 and technical improvement imposed on plant and site to
18 avoid accidents, that naturally the teaching advice has
19 to improve and change. Thus for this reason we have a
20 distinguished engineer as a director of safety. It has
21 to be a concerted action by many people. I don't think
22 the Board has the responsibility for safety associations,
23 or that the Board is satisfied traditionally, or in the
24 future this is all that needs to be done. I am not auth-
25 orized to speak for the Minister, but it is common know-
26 ledge he thinks the teaching, the enforcement and co-
27 ordinating activities are all part of a parcel, and we
28 should all go carefully together. Mr. Draper gives ideas
29 to the associations. He receives ideas from them. He
30 tries to co-ordinate their activities and make it economic-



1 ally sensible. He deals with the Department of Labour and
2 the Board deals with unions and management.

3 MR. ESTEY: As to safety associations them-
4 selves, I think their most useful aspect is teaching.

5 MR. LEGGE: You have people presumably in-
6 terested or voluntary directors of something that takes
7 their time and money. I suggest the analogy is like a
8 club or church. The people who hold office are most in-
9 terested and we think the voluntary enthusiasm is of
10 tremendous help to the Board in getting the maximum effect-
11 ive work.

12 MR. ESTEY: This relationship between the
13 Board and the safety association is one that attracts
14 interest. We know the Board has the official say in the
15 budget, but how much defacto control does the Board enjoy
16 over the budget of one of its component associations?
17 Have you thought ^{it} it too low? Have you raised/or if it is
18 spent in a way you do not approve of, do you alter it?

19 MR. LEGGE: 1966 is the year of the first
20 controlled budget. 1967, I think, would see in fact some
21 real direction, some altering and changing in the light of
22 experience of other associations. There may be some al-
23 tering of objectives. There is no experience in changing
24 them so far, in any way.

25 MR. ESTEY: When was the office Mr. Draper
26 holds created?

27 MR. LEGGE: About a year ago.

28 MR. ESTEY: This, I take it, is part of the
29 revitalization or reorientation of the safety associations
30 vis-a-vis the Board?



1 MR. LEGGE: He is the symbol of us. We
2 want somebody who knows everybody and everything in the
3 safety business to deal for us. We still deal with the
4 president of the associations and he deals with the gener-
5 al managers

6 THE COMMISSIONER: I want to make sure I
7 understand you. Up until 1966 there was no direct control
8 exercised by the Board over the budgets of the various
9 safety associations?

10 MR. LEGGE: This is a very difficult ques-
11 tion, my Lord. The word "direct" is the key one. There
12 is no direct control. I am sure my predecessor talked to
13 the associations about the problems, but as to having a
14 director of projects which we now have in the Board for
15 the department, who now deals with the associations, but
16 for depending on the Board in that expert sense there was
17 no direct control.

18 THE COMMISSIONER: That you will have in
19 1966. Do you contemplate in 1967, by exercising some
20 budgetary control it would influence the medical knowledge
21 for which any one of those associations was spending this
22 money?

23 MR. LEGGE: Yes, we are quite certain this
24 is the most effective way.

25 THE COMMISSIONER: You feel you can exercise
26 budgetary control?

27 MR. LEGGE: Yes we do and to carry it to a
28 logical conclusion. If a safety association became re-
29 calcitrant and said, "you are not helping us" they could
30 withdraw from the patronage of the Board, keep their



1 association and collect their funds themselves. The
2 safety association advantage in being under the control
3 of the Board is that the Board collects the money for them
4 and gives it to them.

5 THE COMMISSIONER: One has the benefit of
6 the directors' services and co-ordinating mailing and
7 various other matters, I suppose, that a head office would
8 provide?

9 MR. LEGGE: I am sure that is correct, sir.

10 THE COMMISSIONER: They have an office of
11 their own, the safety associations?

12 MR. LEGGE: Yes, in the Arcade Building.
13 Basically in that building.

14 MR. ESTEY: All safety associations have
15 their own offices in that building?

16 MR. LEGGE: In addition, they have teaching
17 facilities. The I.A.P.A., has a modern school in Thorn-
18cliffe operating, and the electrical associations have
19 one in Downsview, and these are modern, new 1966 facilities
20 and brand new accommodation.

21 MR. ESTEY: Is their location being apart
22 from the Board a matter of design or necessity because of
23 the overcrowding in your own building?

24 MR. LEGGE: The overcrowding gave rise to
25 moving them to new and modern accommodation, but it is
26 better they have this kind of accommodation for lecture
27 rooms, and the teaching facilities are special again and
28 we do not have the facility at all.

29 MR. ESTEY: In the field of safety associa-
30 tions and the reanalysis of it that the Board is in the



1 process of doing, as you describe it, did the Board make
2 any policy with reference to the three point eight per-
3 cent of the association funds, as to whether that is an
4 average desirable expenditure on safety, or whether high
5 or low, or is that under current study?

6 MR. LEGGE: There are two things in answer
7 to that question. The Board thinks, in the conservative
8 compensation concept, that it is much better that an
9 accident be avoided rather than pay compensation, so
10 therefore in theory and philosophy the Board would will-
11 ingly allocate any kind of money to the teaching of safety,
12 if it were convinced there was a cost effectiveness to
13 this money. The Board would be willing to increase bud-
14 gets in this area, not only on humanitarian grounds which
15 is the first concern, but on the grounds of good business.
16 The budget is not stationary as to percentage or total.
17 If there were devices that warrant the expenditure and we
18 were convinced they were worthwhile in avoiding accidents,
19 if we made that decision we would spend whatever amount of
20 money which in our professional opinion we thought was
21 warranted.

22 MR. ESTEY: That I take it would indicate
23 that three point eight percent is a current ratio which
24 has resulted from the application of the present philosophy,
25 but it isn't the end product, it doesn't dictate anything?

26 MR. LEGGE: That is correct, a perfect
27 analysis.

28 MR. ESTEY: I want to change the subject
29 to something else, Mr. Legge, and that is the question of
30 Board investments. We have been listening to opinions of



1 investment representatives that would indicate that by
2 other financial procedures, the need for investment may
3 not be so much. To begin with it arises out of Section
4 107, I think, the Board is to establish reserves, and I
5 take it the Board does this in order to finance its oper-
6 ation throughout the year, while collection is confined
7 to one part of the year. In substance, that is why you
8 do it?

9 MR. LEGGE: That is correct. There are
10 many facets to this argument about investment, and the
11 Board is cognizant of all of them and familiar with the
12 pros and cons. As to the facts, the Board's income in
13 1965 from investments which the Board had made was of the
14 order of eleven million dollars, which is approximately
15 ten percent of the assessment. Now an alternative to
16 investing money which can be done when you have reserves
17 and collect annually, would be to have monthly and quar-
18 terly payments and this would mean the employer would
19 theoretically have the use of the money for that period
20 of time. If we were denied the advantage of making eleven
21 million dollars a year on our investments, then the asses-
22 sment would have to go up. It seems to have been generally
23 conceded that the Board's investment policy has no risk
24 to it, because they are a specified type of government
25 backed trustee investments. There is no risk element in
26 any real consensus of it. The second consensus is it is
27 a rewarding operation and Mr. MacDonald and his team show
28 formidable yields on the investments, therefore we feel
29 the Board as a corporate business management operation,
30 feel we do very well with the money, and it is a very



1 useful adjunct to the assessment income, and if we did
2 not have it the assessment would have to increase to the
3 tune of eleven million a year.

4 MR. ESTEY: The alternative, I take it,
5 would be if you changed the base of collecting from the
6 employer, the cost of collecting would increase substant-
7 ially?

8 MR. LEGGE: I am sure you are right about
9 that. You would have to increase staffs and computer
10 systems.

11 THE COMMISSIONER: You don't lose much by
12 fly-by-night operators, or any operation that lasts for
13 a few months and disappears, in this method of collecting
14 your funds?

15 MR. LEGGE: We don't lose on our investments,
16 sir. We do lose on the collection of our assessments and
17 Mr. MacDonald could tell me the amount.

18 MR. MACDONALD: It was less than one per-
19 cent of assessment last year, sir.

20 MR. LEGGE: That is the order and in any
21 business operation would certainly be a manageable sum
22 and always reached for. In the practice of law you would
23 be very happy if you collected all but one percent of your
24 fees.

25 THE COMMISSIONER: It appears to affect the
26 construction industry more than anyone else, they are the
27 ones who complained about it.

28 MR. LEGGE: We have notice of this.

29 MR. ESTEY: In this question of investments,
30 Mr. Legge, do you think it would increase or place a



1 larger burden on the Board, if the powers of investment
2 were broadened as the investment dealers have suggested
3 to parallel the powers of the trustee act? Would it have
4 a significant change?

5 MR. LEGGE: I don't think so. There is a
6 salutary effect in the public mind to restrictive invest-
7 ment to those guaranteed by the government. I think in
8 reality the investment might be more lucrative in the
9 yield and the risk hazard wouldn't be increased if you
10 were restricted to trustee investments. We have special
11 trustee investments now.

12 MR. ESTEY: Thank you, Mr. Legge, those are
13 the only topics I wish to discuss with you. Thank you
14 very much.

15 THE COMMISSIONER: Thank you, Mr. Legge.

16 MR. ESTEY: Mr. Commissioner, that concludes
17 the submissions and briefs we have had filed with us, and
18 I have notice of no other organizations who wish to say
19 anything. We have one outstanding matter which has arisen
20 because of a mailing problem and we may have to reconvene
21 for some other submissions or to have resubmitted a brief
22 we already have, so, therefore, subject to those special
23 matters that would conclude the hearing we have now been
24 conducting.

25 THE COMMISSIONER: I indicated at the begin-
26 ning, in answer to some inquiries that were put, those
27 who made submissions, if they felt it necessary at the
28 end of inquiry to make comment on the character of the
29 evidence that has been heard, would be allowed to do so.
30 There has been no request to do so that I know of, but



1 possibly that opportunity should be given and if we are
2 going to reconvene at a later period perhaps it could be
3 done at that time, unless anybody wishes to proceed today.
4 We could sit after lunch, if there are any of those organiz-
5 ations here who wish to proceed after lunch they can be
6 heard.

7 I am anxious that we don't simply have a
8 repeating or going over again of the matters that have
9 been contained in the submission or spoken in evidence.
10 There is bound to be a conflict in any inquiry of this
11 kind. Particularly in an inquiry of this kind, due to
12 differing views of those represented. There will be
13 difference of opinion between one section of the community
14 or the other. That is the sort of thing I ~~will~~ have to
15 decide. On the other hand, it may be that there has been
16 evidence heard here or contained in some subsequent sub-
17 missions that some of the parties may feel they should
18 have the opportunity to reply to. That will be given, so
19 if anyone desires to do so I would appreciate it if they
20 would let me know.

21 MR. GALLAGHER: Mr. Commissioner, our
22 organization is grateful and we would like to have an
23 opportunity to come back in the way you indicated. Not
24 at this moment, but at a later date.

25 THE COMMISSIONER: You are aware of the
26 limitations I am seeking to propose.

27 MR. GALLAGHER: Yes, Mr. Commissioner. We
28 will not enter into a controversy about personalities.

29 THE COMMISSIONER: I don't want repetition,
30 that is all. You are not prepared to do that today, I



1 take it?

2 MR. GALLAGHER: No, sir.

3 THE COMMISSIONER: Then we will adjourn.

4 MR. ESTEY: Mr. Osler, would you wish to
5 have such an opportunity?

6 MR. OSLER: If you would like to ask any
7 questions or have any explanation of the brief which I
8 can give, or comment, I shall be delighted to be here.

9 MR. ESTEY: We then would circulate a notice
10 of the time.

11 MR. CRAIG: I will have to consult with our
12 executive board, but I am confident the federation would
13 also wish to add a few words.

14 MR. ESTEY: We will send out a notice
15 giving you advance notice of the date we will hear the
16 final submissions.

17 THE COMMISSIONER: That appears to complete
18 our work for today, until such time as you receive notice
19 of a subsequent hearing. In view of the communication we
20 have had you weren't able to get in touch with this union
21 today? In view of the communication we have had today
22 from this other party, it is unlikely that the hearing
23 will be prior to the next two weeks. It will not be in
24 the third and fourth week in November as I will be in my
25 own court. Maybe on the 28th, 29th and 30th of November
26 we will be able to resume. You can keep that in mind.
27 The Commission is adjourned.



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O., 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act.

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Monday
and Tuesday, 28 and 29 November, 1966

APPEARANCES

W. Z. Estey and)
H. D. Guthrie) Counsel to the Commission

G. A. Johnston Secretary

ALSO PRESENT:

28 Nov 1966

G. C. Butterill Canadian National Railways et al
J. Ostrowski Private Appearance

29 Nov 1966

W. R. Burnett Canadian National Railways, et al
W. Draper and)
W. R. Kerr) The Workmen's Compensation Board
C. G. Gibson Department of Labour of Ontario
J. H. Craigs and)
H. Weisbach) Ontario Federation of Labour
C. R. Osler, Q.C. International Nickel Co. of Canada Ltd.
J. Devlin, R. Hounscome,) Ontario Legislative Committee,
J. Martindale and F. J.) International Railway Brother-
Culliton) hoods.
G. J. Samson Construction Safety Association

Nethercut & Young, Limited, Official Reporters, 48 York
Street, Toronto, Ontario



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I N D E X

Toronto, Ontario

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of Canada, Ltd. 2965

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2976

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EXHIBITS

No. 49 Reports of Construction Safety Association
and Industrial Accident Prevention
Association 2912

No. 50 Report on Grants to Prevention
Associations 2912

No. 51 Report for 1966 on FPAPA, OPPMSA,
LAPA, TSA, CSAEUSA, MAPA 2912

No. 52 Report of a Study of Construction
Safety Advertising Penetration dated
November 1965 conducted by Construc-
tion Safety Associations 2981

ERRATA

PageLine Correction

248 6 "compensation" should be "accident prevention"

654 3 "balance of" should be "benefit"

2794 14 & 15 "railways" should be "refineries" in each
line

2798 22 "compensations" should be "company's"

2837 13 "499" should be "4,949"

2833 28 "85" should be "approximately 25"



L/SS 1 ---On commencing at ten o'clock a.m.

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MR. GUTHRIE: Mr. Commissioner, it was announced by notice to all who had attended at earlier hearings or had submitted briefs that an opportunity would be afforded today at ten o'clock for any person who had already appeared to reply to any submissions which had been made. We have this morning Mr. and Mrs. Owstrowski with us, and Mr. Butterill of the railways. Mr. Butterill, I know, wanted to speak to a matter of wording of a proposed amendment relating to the right of appeal. Perhaps he would like to start.

THE COMMISSIONER: We haven't heard from two others who indicated they wanted to appear, Mr. Gallagher, the Ontario Labour Federation, and Mr. Osler, International Nickel.

MR. GUTHRIE: Yes, I think Mr. Osler, Mr. Gallagher of the Federation of Labour, and also there was some indication that Mine, Mill might have wanted to come. They have all received notice. I noticed in the press that Mr. Gallagher is engaged at some other meeting this morning.

THE COMMISSIONER: What we will do is we will carry on, and we will be sitting tomorrow, in any event, and they can make their submissions then if they so desire.

MR. BUTTERILL: I don't think, Mr. Commissioner, this is actual reply, but when we put in our recent submission we were asked with respect to appeals to suggest to the Commission just how this



1 amendment could be accomplished.

2 THE COMMISSIONER: Which amendment?

3 MR. BUTTERILL: Which gives the right of
4 appeal to the decision of the Board. I drafted out an
5 amendment, Mr. Commissioner, to the Section 72, and we
6 have modified the right of appeal to this extent, that
7 you can only appeal on the basis of the Board stating a
8 case of its own motion or in the discretion of the Board
9 on the motion of an employer or worker.

10 THE COMMISSIONER: I understand the first
11 one. What is the second one?

12 MR. BUTTERILL: Maybe if I just read the
13 proposed amendment it would clarify itself. I suggest
14 that there be another subsection added to Section 72 to
15 provide that "The Board may of its own motion or in its
16 discretion on the motion of an employer or workman state
17 a case in writing for the opinion of the Court of Appeal
18 upon any question which, in the opinion of the Board, is
19 a question as to its jurisdiction or a question of law."
20 In other words, an employer or workman hasn't got an
21 immediate right to have a case stated; it is still in the
22 discretion of the Board whether or not it states a case.

23 THE COMMISSIONER: That has perhaps more to
24 recommend itself than the original motion. There seems
25 to be reluctance on both labour and industry to get
26 involved in the work of the courts.

27 MR. BUTTERILL: We appreciate that, but we
28 thought that there may be some case for the Board itself
29 to state a case; and even in the case where the employer
30 or workman wanted to state it, it is still within the



1 discretion of the Board.

2 THE COMMISSIONER: Would you please read it
3 to me again?

4 MR. BUTTERILL: "The Board may of its own
5 motion or in its discretion on the motion of an employer
6 or workman state a case in writing for the opinion of
7 the Court of Appeal upon any question which, in the
8 opinion of the Board, is a question as to its jurisdiction
9 or a question of law." In other words, if an employer
10 or employee thought it should be stated they can so
11 indicate, but it is still in the discretion of the Board
12 whether it is stated.

13 THE COMMISSIONER: You have a lot of
14 experience in asking for the right to appeal, but it
15 seems to me in almost any case they can find some point
16 of law in the manner in which the case can be heard.
17 Perhaps it should be left to the Board whether it is a
18 point of law or not. They don't get leave in every case,
19 but they get leave in most cases.

20 MR. BUTTERILL: The other side of the
21 question is that I think it might give some assistance
22 to the Board in a difficult case.

23 THE COMMISSIONER: I can understand that,
24 yes.

25 MR. BUTTERILL: If we eliminate stating a
26 case on the motion of an employer or workman, leaving it
27 entirely to the Board, I don't think we would have any
28 objection to that, Mr. Commissioner. Maybe I could
29 just put in brackets those words, "or in its discretion
30 on the motion of an employer or workman", that we might



1 take those words out.

2 THE COMMISSIONER: This is a joint brief?

3 MR. BUTTERILL: This is a joint brief of the
4 railways. Mr. Burnett couldn't be here, so he asked me
5 to come.

6 MR. GUTHRIE: Mr. Butterill, in Schedule
7 "B" to your brief you did set out a draft clause earlier,
8 and there was a clause which provided for a right of
9 representation to any association representing a class.
10 You remember that?

11 MR. BUTTERILL: Yes.

12 MR. GUTHRIE: You would leave that out?

13 MR. BUTTERILL: No, I would leave that in.
14 I have added that point you have mentioned, a subsection
15 (6), and I have also put in subsection (7), the one about
16 the provisions of The Judicature Act and the Rules that
17 apply.

18 MR. GUTHRIE: Yes, I see that now.

19 THE COMMISSIONER: It really doesn't matter
20 whether the last part is in or out because they can
21 always make representations to the Board to state a
22 question of law.

23 MR. BUTTERILL: That is right, sir. There
24 is just one other point we thought we should mention in
25 our brief which I don't think was mentioned at the time
26 of our original submission. This is the question of the
27 amendment to Section 7 (2) and Section 9 (4) providing
28 for the time limitation within which the election has to
29 be made. It seems that under Section 9 (4) the Board can
30 extend the time at which election can be made, and this



1 in certain cases could result in, say, the Schedule 2
2 employer or the Board being statute barred in bringing
3 an action.

4 MR. GUTHRIE: There is no protection
5 afforded there.

6 MR. BUTTERILL: We don't think so in our
7 interpretation, and we in our brief have suggested an
8 amendment to the Act which would, we think, protect the
9 Board and the employer.

10 MR. GUTHRIE: Where is the power to extend
11 the time?

12 MR. BUTTERILL: It is right at the end of
13 Section 7 (2), Mr. Guthrie.

14 MR. GUTHRIE: Yes, I see.

15 MR. BUTTERILL: "or within such longer
16 period as either before or after the expiration of such
17 three months the Board may allow."

18 MR. GUTHRIE: Would you like to read that
19 portion of your brief into the record? I don't think
20 it has been previously read in.

21 THE COMMISSIONER: Did you have some
22 reference to Section 9 (4), too?

23 MR. BUTTERILL: 9 (4) is the section
24 pursuant to which the employer gets a right of
25 subrogation.

26 MR. GUTHRIE: It is Section 9, subsection
27 (4), is it not?

28 MR. BUTTERILL: Yes.
29
30



2/FJN/SS

1

This appears at page 8.

2

THE COMMISSIONER: 9, subsection (3), isn't

3

it?

4

MR. BUTTERILL: 9 (4), actually, Mr.

5

Commissioner, deals with the time to be given.

6

THE COMMISSIONER: But you are subrogated

7

under 9 (3).

8

MR. BUTTERILL: That is right.

9

THE COMMISSIONER: Yes, it seems to me that

10

in a previous report, maybe that of Justice Roach, he

11

felt there should be some protection.

12

MR. BUTTERILL: I think that is right.

13

THE COMMISSIONER: If not in his, then in

14

Mr. Justice Tysoe's.

15

MR. BUTTERILL: I saw it in one of the

16

reports.

17

THE COMMISSIONER: I think so too.

18

MR. BUTTERILL: You could appreciate it

19

if the Board delayed for over a year, your lordship.

20

You would be out of court under The Highway Traffic Act.

21

THE COMMISSIONER: Yes.

22

Do you want to read in that portion of your

23

brief?

24

MR. GUTHRIE: I think Mr. Butterill is

25

going to read that paragraph.

26

MR. BUTTERILL: This appears, Mr. Commissioner,

27

on page 8, Section 3, of our brief entitled "Election -

28

Time Limitation".

29

By Section 7 (2) and Section 9 (4) of the

30

Act the time limit within which an election to claim



1 compensation is to be made is three months. However,
2 it is to be noted that this time limit may be extended
3 for an indefinite period by the Board. It may be the
4 intent expressed in the Section that the power to extend
5 shall apply only to fatal cases. As the exercise by the
6 Board or the employer, as the case may be, of the subro-
7 gation rights given by Section 9 (3) commences with the
8 election, some problems may be created if the election is
9 not made within the time limit for action against a
10 third party who allegedly caused or contributed to the
11 injury or death of the workman.

12 The initial period of three months creates
13 difficulty in this respect if the limitation period for
14 any action against the third party is three months or
15 less. A limitation of three months exists in relation
16 to actions arising out of non-repair of highways.

17 With reference to the matter of extension of
18 the time set forth in Section 7 (2) it is assumed that
19 the Board would not prejudice its rights to take action
20 by an extension beyond the applicable limitation period
21 in those cases where the action is to be brought by the
22 Board. Nor do we believe that the Board would intentionally
23 prejudice the employer by an extension in those cases
24 where the action is to be brought by the Employer; but
25 we are of the opinion that the Act should contain express
26 protection of the Employer in this regard.

27 There would seem to be several ways in
28 which the above objectives could be accomplished but it
29 is our respectful submission that the above difficulties
30



1 created by the present subsection (2) of Section 7 can
2 be remedied by altering this subsection and adding an
3 additional subsection as indicated in Schedule C hereto
4 attached.

5 There would seem to be some ambiguity in the
6 wording of Section 7 (2) creating some doubt whether
7 the right to extend the time for election applies to non-
8 fatal cases. Fairness to the workman would seem to
9 justify any necessary clarification to make such an
10 extension possible.

11 The proposed alterations would not appear
12 to work any hardship on the workman and would remove
13 the risk of a procedural bar creating an immunity for a
14 third party who in fact caused or contributed to the
15 injury of the workman.

16 That reference to the ambiguity ---

17 THE COMMISSIONER: Schedule C refers to two
18 months. Isn't the period three months?

19 MR. BUTTERILL: It is three months in the
20 other, but we put in two months there, Mr. Commissioner,
21 because we had in mind that you have to bring an action,
22 say, under The Ontario Highway Traffic Act, in three
23 months. So this is one statute we know of where the
24 three months limitation period could bar it, so if we
25 made it two months we would still have a month in which
26 to bring our action if it were connected with the
27 Ontario highways.

28 We tried to accomplish this by subsection
29 (3) of our proposed amendment which says:

30 "The Board shall not grant an extension



1 of time under subsection (2) if such extension would
2 prejudice the Board or Employer in regard to any right of
3 action under Section 9, subsection (3) being barred by
4 reason of the expiry of a limitation period for the
5 bringing of an action against a third party who caused,
6 or contributed to, the injuries of the employee."

7 THE COMMISSIONER: Supposing you left it at
8 three months. I mean to say, you might get caught for
9 the odd day at the end of the three-month period.

10 MR. BUTTERILL: You can't protect against
11 everything.

12 THE COMMISSIONER: No. In an odd case you
13 might get caught, but I mean if it was within the three
14 months you would generally have time to get your notice
15 out.

16 MR. BUTTERILL: I think we would be happy
17 with the three months, as long as it was restricted and
18 there was no restriction beyond that time. I would
19 think that people should be able to bring an action
20 within the three-month period. If you give them more
21 time, then they take it. It is a human failing.

22 MR. GUTHRIE: There certainly could be
23 difficulties in the case of a fatal accident of
24 ascertaining executors and so on to make the decision
25 within that two-month period.

26 MR. BUTTERILL: This is right.

27 MR. GUTHRIE: Is that everything, Mr.
28 Butterill?

29 MR. BUTTERILL: That is everything.

30 MR. GUTHRIE: Thank you very much.



1 Mr. Commissioner, Mr. Ostrowski has
2 indicated that he would like an opportunity to speak to
3 the Commission again.

4 MR. OSTROWSKI: My lord, I do not dare to
5 suggest any wording of any changes in the Act. I seek
6 to present only general ideas and feelings and point to
7 some obsolete or unjust parts of The Workmen's
8 Compensation Act. I am more than sure that the probable
9 expression of it would be your lordship's decision how to
10 put it into the Act, only some suggestions which were
11 made during these hearings would need some clarification.

12 First, I would like to express my own
13 opinion that the right of appeal should be in a
14 separate section in the Act, not an amendment to a
15 certain section referring to a certain part of the Act.

16 THE COMMISSIONER: You think the right of
17 appeal should be a section of the Act rather than in the
18 regulations?

19 MR. OSTROWSKI: Rather in the regulations
20 than in referring to a certain part of the Act. It
21 should be very centrally clear in saying how and where
22 and so on.

23 THE COMMISSIONER: Are you talking now
24 about the existing right of appeal or are you talking
25 about the right of appeal to the courts?

26 MR. OSTROWSKI: To the courts. That was my
27 first point of my submission.

28 THE COMMISSIONER: When I say the existing
29 right of appeal, there have been submissions made that
30 even the existing right should be clearly stated in the



1 regulations so that claimants know what their rights
2 are.

3 MR. OSTROWSKI: That was my next point,
4 your lordship.

5 Certainly determining the right of
6 interested parties in the administrative appeal would
7 also need clarifying, your lordship, to make it very
8 clear to the workmen or to the interested parties what
9 their rights are, what they can base it on and certainly
10 comparing with the proceedings of the court as we under-
11 stand it. I think that there is no reason an appeal
12 could be made without foreknowledge of the facts, of the
13 files of the Workmen's Compensation Board, of medical
14 opinion, and all facts regarding the point of appeal.
15 So this should be, to my humble opinion, established
16 also very clearly in the Act.

17 Certainly as I understand it --- I will not
18 repeat the things which I have already recorded --- but
19 as I understand in the invitation or notice to today's
20 meeting I was also given the right to answer to any
21 briefs and recommendations made by other parties. I will
22 come only to that famous privilege of medical records or
23 all records of the Compensation Board.

24 I read very carefully the brief presented
25 by the Ontario Medical Association and I think that this
26 brief is contradicting even some existing parts of the
27 Act because if you will look at Section 23 of the Act
28 you will find that where a workman has upon the request
29 of his employer submitted himself for examination or has
30 been examined by a duly-qualified medical practitioner



1 selected by himself a copy of the report of the medical
2 practitioner as to the workman's condition has been
3 furnished in the former case by the employer to the
4 workman and in the latter by the workman to the employer.
5 So there is no privilege at that stage.

6 THE COMMISSIONER: Just hold it a moment.

7 MR. OSTROWSKI: So I understand that whenever
8 a workman has to submit his examination to the employer
9 or vice-versa, the employer to the workman, the medical
10 opinion is sent in in full to one of the parties. So at
11 that time there is no privilege, there is no reason for
12 privilege. Why should this privilege^{not} be extended when
13 the proceedings are going higher up to the Workmen's
14 Compensation Board?

15 I can't understand also how the requirement
16 or request of the Ontario Medical Association can ask for
17 full privilege of all medical reports even in summary
18 form. It is a fact established --- and I will not
19 repeat what I have already presented ---- but it is an
20 established fact that the first duty is to the patient,
21 not to the Board, not to anybody but to the patient.
22 But for some reason of rather daily convenience the
23 Medical Association insists that it will make easier
24 the life of the practitioner in the small town, as they
25 are usually referred to, to make this report privileged.
26 I certainly have not the opportunity to go through the
27 libraries and quote all this opinion expressed many,
28 many times by the courts, but recently I had the chance
29 to read the medical records of 1948, December, page 560,
30 which deals with privileged communications.



1 THE COMMISSIONER: What are you reading from?

2 MR. OSTROWSKI: Medical Records. It is from
3 December, 1948.

4 THE COMMISSIONER: Medical records of what?

5 MR. OSTROWSKI: Medical Records. That is the
6 periodical.

7 THE COMMISSIONER: That is a periodical
8 called Medical Records?

9 MR. OSTROWSKI: Yes, and they refer to the
10 case of Wolfe vs. the People and the Colorado Supreme
11 Court 187-P to D-26, and in that judgment the Supreme
12 Court of Colorado said:

13 "The statute is solely for
14 the protection of the patients, not the
15 physician".

16 It is one of the most clearly-expressed opinions I ever
17 ran across. They said expressively that the statute of
18 the privileged information is solely for the protection
19 of the patient, not of the physician. Why the Medical
20 Association insists that they should always be
21 protected I can't really understand.

22 In the brief submitted by the Ontario
23 Medical Association they say that the purpose of the
24 report is to assist the doctors working in the claims
25 department. Is it so? Is it true? Is that the true
26 purpose of what a doctor has to do? Certainly he has
27 to assist, but in a clear, true and open way, not hiding
28 anything from anyone. I have heard, I think, Mr. Melvin,
29 the vice-president of the Ontario Medical Association
30 whose reason for this privilege and the necessity of



1 privileged information submitted by the doctors was in
2 technical language at first and then some abbreviation.
3 One of them was that some of the workmen were offended
4 by the appellation "S.O.B.". It is not much for a doctor
5 to write "Short of breath" instead of "S.O.B.", and
6 because of that asking for the privileged information.

7 Secondly, who was reading this information?
8 Usually when it comes to the appeal the workman doesn't
9 have them, he asks his lawyer or his doctor or he goes
10 to the Workmen's Compensation Board. Why the
11 technicality of the opinion should justify the secrecy
12 of that opinion I don't know. This is beyond my humble
13 understanding, and that is why we are opposing it.

14 I think also it looks to me very ridiculous
15 --- maybe I am using not the proper word, but please
16 forgive me, my lord, for any of my mistakes in English,
17 but it looks to me ridiculous that the Workmen's
18 Compensation Board accept such opinions of the Medical
19 Association just to keep unstained the image of a
20 doctor in a community when he is writing a different
21 opinion or a differently worded opinion to the Workmen's
22 Compensation Board. I think that the Workmen's
23 Compensation Board should be first of all interested ---

24 THE COMMISSIONER: It is not his reputation
25 in the community: They feel that he won't be as frank
26 in a restricted community where he has to depend wholly
27 on the community.

28 MR. OSTROWSKI: His first duty is to be
29 frank in all details to the patient and I think that
30 this does not change at all the reality of the duty



1 of the doctor to the patient.

2 Another thing which comes to my mind is
3 also that the difference of opinion or difference in
4 wording of the opinion complicates the dealings with
5 the compensation board. Why? If an injured workman is
6 getting very optimistic for him, opinion from a doctor,
7 and then faces a board which refuses him compensation,
8 he will certainly blame either the compensation board
9 or the doctor. Why? If he gets that opinion first,
10 frankly, without any secrecy, without any withholding
11 of any facts, he will maybe not appeal at all. He
12 trusts his doctor in 99 percent of the cases. Why should
13 he receive something which is not exactly what is
14 presented to the compensation board? That thing, to my
15 opinion, is only helping to create more cases, more
16 unnecessary litigation, if it could be so called, with
17 the compensation board where it could be very easily
18 avoided by the simple fact by the statement of the
19 truth to all interested parties that all of them will
20 have the same material.

21 That is the main thing which I wanted to answer as
22 far as privilege is concerned and as far as the right of
23 appeal is concerned.

24 Thank you, my lord, for permitting me.

25 THE COMMISSIONER: Thank you, Mr. Ostrowski.

26 MR.GUTHRIE: Does anyone else have any wish
27 to address the Commission? If so, would they care to
28 identify themselves and come forward, please?

29 It was expected that the chiropractors
30 would be present today to rebut some material, Mr.



1 Commissioner, and it was thought that the writer of the
2 brief on accident proneness, Jean Surry, might have
3 attended, but evidently there is no one else present,
4 Mr. Commissioner, who wishes to speak at this time.

5 THE COMMISSIONER: Has Mr. Kerr some
6 statements he wishes to make?

7 MR. KERR: Mr. Commissioner, Mr. Draper will
8 be with us tomorrow morning. He could not be here today
9 but he will be with us tomorrow morning to present some
10 information on statistics that are provided through the
11 safety associations.

12 THE COMMISSIONER: All right.

13 MR. GUTHRIE: Well, tomorrow, sir, we have
14 the railway brotherhoods, International Railway Brother-
15 hoods.

16 One matter that has not been taken up
17 before you, sir, as yet, is the brief of the Corporation
18 of the City of Toronto, and I thought it might be
19 appropriate to read that into the record. It follows on
20 from Mr. Butterill's comments about third party cases and
21 subrogation.

22 This is the submission of the Corporation
23 of the City of Toronto.

24 The Corporation of the City of Toronto is,
25 save for the matters hereinafter mentioned, content with
26 the position of the City as an employer under Schedule 2
27 of the Act, individually liable to pay compensation.

28 THE COMMISSIONER: That is the first time we
29 have heard about that, isn't it?

30 MR. GUTHRIE: Yes. This is changing now to



1 a different point, sir.

2
3 The City of Toronto feels, however, as it did
4 when a similar enquiry was conducted by The Honourable
5 Mr. Justice Roach in 1949-50, that appropriate amendments
6 should be made to The Workmen's Compensation Act to
7 clarify the position of workmen and employers under
8 Schedule 2 in the field of Third Party Liability.

9 1. When an employee to whom the Act applies
10 sustains an injury arising out of and in the course of
11 his employment, which would entitle him or his
12 dependents to relief against some person other than his
13 employer, he may choose to treat the matter entirely
14 as a private one and claim nothing under the Act or he
15 may claim compensation under the Act. Section 9 (2) of
16 the Act provides that if the workman enforces his own
17 rights and recovers less than the compensation to which
18 he would have been entitled, he may then claim the
19 difference. Section 9 (2) should be amended to clarify
20 whether it applies to settlements before judgment.

21 Throughout the Act, the word "compensation"
22 is used with special reference to the money which is
23 paid to the workman in lieu of his wages, but it should
24 be noted that the workman is also entitled to medical
25 aid under Section 51. The Act makes it quite clear that
26 compensation and medical aid are two different things,
27 as for example, in Section 5 of the Act. It would appear
28 to be the unintentional result that a workman can enforce
29 his own rights and also receive medical aid under the
30 Statute. It is, therefore, submitted that: -



1 (a) Section 9 (1) should be amended to read
2 as follows:

3 "Where an accident arising out of and
4 in the course of his employment happens
5 to a workman under such circumstances
6 as entitle him or his dependents to an
7 action against some person other than
8 his employer, the workman and his
9 dependants, if entitled to benefits
10 under this part may claim such benefits
11 or may bring such action."

12 I think the change of "compensation" in the present
13 section ~~to~~ "benefits" in the proposed amendment, that
14 is the only change that I can see. So that it is not
15 limited to compensation only but would include medical
16 aid as well, and then a corresponding amendment is
17 suggested to Section 51, subsection (1) which has been
18 changed to read in part as follows:

19 "Every workman entitled to and
20 claiming benefits under this part...."

21 and the point is the same.

22 I don't really see the need at the moment.

23 THE COMMISSIONER: It means that sometimes
24 a workman may pursue his action and recover without ever
25 having a claim for the cost of medical attention and yet

26 MR. GUTHRIE: Yes, I see that point, sir,
27 but I am not sure of the need for the change in Section
28 51.

29 THE COMMISSIONER: And yet the Section 2
30 employer would be stuck for it.



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MR. GUTHRIE: 51 is the section which entitles a workman to medical aid. It is not related directly to third party liability at all, and I would think that the way it is it is better for them.

THE COMMISSIONER: This difference between the words "compensation" and "benefits" goes a long way back. Compensation is something that a workman is entitled to as a matter of right; benefits come under welfare legislation, and, generally speaking, the Act has kept the word out, although it may be necessary in this particular instance. It may be important.

MR. GUTHRIE: I don't think the word matters to them as long as it is some word which indicates it includes medical aid under Section 9. I think it is an important point. You could say "entitled to compensation or medical aid under Section 9 (1)" and that would answer their question, I think.

The brief goes on:

2. Where a municipal employee is injured under circumstances which may possibly involve liability of a third person, the present provisions of the Act with respect to election are not entirely satisfactory to this municipality. In many cases, election has been postponed pending negotiations by the workman with the third party or his insurers, and in the intervening period, the municipality is not usually a party to such negotiations. It would appear that the scheme of election under the Act, while possibly suited to industries under Schedule 1 of the Act, should be revised with respect to industries under Schedule 2, to provide that



1 a workman thereunder shall elect not to claim benefits
2 under the Act within three months or such further time
3 as the Board may allow, failing which he shall be
4 presumed to have elected to claim such benefits. In
5 addition, the Act should be amended to invalidate settle-
6 ments made by the workman before he has elected not to
7 claim benefits under the Act. Further, where the workman
8 has elected not to claim benefits under the Act and
9 proposes to enter into any settlement with a third party,
10 that settlement, if it is submitted, should be approved by
11 The Workmen's Compensation Board so that the Board may
12 be satisfied that the settlement is in the best interests
13 of the workman or his dependants in the event of a claim
14 under Section 9 (2). Where a workman elects not to
15 claim benefits under the Act, the Act should be amended
16 to bar any claim to benefits under the Act for injuries
17 or damages which were not apparent or reasonably
18 foreseeable at the time of the election.

19 THE COMMISSIONER: I understand why the
20 Board might be interested if settlement was made for less
21 than what the compensation would be. If the settlement
22 was made for more than what the compensation would be,
23 they would have no concern.

24 MR. GUTHRIE: That is right.

25 THE COMMISSIONER: Earlier in that paragraph
26 they seek to have it presumed, if he hasn't done anything
27 within three months, that he has elected to claim
28 benefits. But that wouldn't give them the right to sue
29 in that time, would it, the Schedule 2 employer? They
30 say that the Act should be amended to invalidate



1 settlements made by the workman before he has elected not
2 to claim benefits. Well, they are going pretty far in
3 that. However, we will consider it.

4 MR. GUTHRIE: Paragraphs 1 and 2 have
5 dealt with suggested changes in the Act to deal with
6 difficulties which arise where the workman sues in his
7 own name to secure his rights against the third party.
8 The principal submissions of the City, however, deal with
9 the situation where the City, as a Schedule 2 employer,
10 individually liable to pay compensation and other
11 benefits, brings an action pursuant to the provisions of
12 Section 9 (3) of the Act. For convenience, this section
13 is set out hereunder:

14 "If the workman or his dependants elect
15 to claim compensation under this Part,
16 the employer, if he is individually
17 liable to pay it, and the Board, if the
18 compensation is payable out of the
19 accident fund, are subrogated to the
20 rights of the workman or his dependants,
21 and may maintain an action in his or
22 their names or in the name of the Board
23 against the person against whom the
24 action lies, and any sum recovered from
25 him by the Board shall form part of
26 the accident fund."

27 It is to be observed that as the section now reads, the
28 Workmen's Compensation Board may bring an action in its
29 name if the compensation is payable out of the accident
30 fund, but a Schedule 2 employer is given only the



1 statutory right to bring an action in the name of the
2 workman or his dependants.

3 In the City's view, it is not important that
4 Schedule 2 employers be given the right to bring an
5 action in the name of the employer, but it is important
6 that the Statute make quite clear, by appropriate
7 amendments, that all payments to or on behalf of the work-
8 man or his dependants made by the employer are
9 recoverable in such an action.

10 THE COMMISSIONER: That is about the same
11 thing they were referring to before about the medical
12 expenses, isn't it?

13 MR.GUTHRIE: It is the same thought, yes.

14 It has been argued that a Schedule 2
15 employer, in bringing an action under Section 9 (3), can
16 only stand in the place of the workman and can merely
17 enforce his rights. If this is so, then it can be argued
18 that only the items of loss suffered by the workman
19 can be recovered. If the workman has not been put to
20 any medical expense and has not lost wages because
21 his employer has paid medical aid and compensation, then,
22 so the argument runs, the workman has not suffered
23 damages to the extent of such payments.

24 The Workmen's Compensation Act was never
25 intended to free a tortfeasor from any of the damages
26 which he would have been liable to pay but for the Act.
27 Section 9 (3) of the Act was intended for the benefit
28 of the employer or the Board and should not operate to
29 excuse a tortfeasor from part of his liability.

30 It is therefore submitted as a



1 recommendation to your Commission that the Act be
2 amended to give a Schedule 2 employer a definite
3 statutory right to claim from the tortfeasor in a
4 subrogated action all payments made to or on behalf of
5 the workman or his dependants, plus administration
6 expenses paid under Section 119 of the Act by the
7 employer.

8 4. In the City's view, it is desirable that
9 the Statute make it clear that the employer is entitled
10 to bring an action in the name of the workman for all
11 of the benefits provided by the employer, rather than
12 attempting to achieve such a result by permitting the
13 employer to sue in his own name. A jury would be
14 influenced in some cases by the presence of the employer
15 as a party plaintiff, particularly in the case of a
16 corporation as large as the City of Toronto. indeed, it
17 is further submitted that actions brought by Schedule 2
18 employers in the name of the workman should be tried
19 without a jury. It is rare that a jury will not be
20 aware that the real plaintiff is the employer and not
21 the workman who has already been compensated. In view
22 of the type of employer coming within Schedule 2, a
23 real danger exists that the intention of the Legislature,
24 expressed in Section 9 (3) of the Act, will be
25 frustrated.

26 THE COMMISSIONER: I have never understood
27 the basis on which the municipality escaped jury actions,
28 why they should any more than railway companies.

29 MR. GUTHRIE: He is just coming to that now
30 in the brief.



1 Actions arising out of non-repair of a
2 highway are now tried without a jury and juries are
3 dispensed with where mention of insurance is made.
4 Juries should not be put in a position where they may be
5 influenced improperly by extraneous matters.

6 THE COMMISSIONER: They don't have to
7 mention insurance to juries any ~~more~~; they just assume
8 they are insured.

9 5. MR. GUTHRIE: It is submitted that the Act
10 should be amended by adding a statutory provision that
11 any damages in excess of all monies paid out by a
12 Schedule 2 employer in respect of the accident, recovered
13 by the employer in any action brought by him under
14 Section 9 (3), less a proper allowance for legal
15 expenses, shall be paid over to the workman, provided
16 that such payment shall stand as a credit against any
17 further claims by the workman for the same injury or
18 disability.

19 That is a rather interesting one. I think
20 the practice of the Board, although there is nothing in
21 the Act, is to pay over to the workman any excess it
22 recovers. There is one employer I can recall whose
23 practice is to the contrary.

24 THE COMMISSIONER: I think employers under
25 Schedule 2 do what they are seeking to do there, except
26 they do it by agreement with the workman, that this
27 money will stand against any further claim for compensa-
28 tion until such time as it is exhausted. It might be as
29 well to put it into the provisions of the Act. It seems
30 if you recover more than the compensation paid it should



1 be paid back but with the provision that it should stand
2 against any further compensation it is necessary to award.

3 MR. GUTHRIE: I think it was the Bell
4 Telephone who had an objection to this and they wanted
5 to justify the reason for their objection because of a
6 press comment which put them in an unfavourable light,
7 that where they had sickness benefits it may be proper
8 for the employer to have some discretion. I am not sure
9 what their point is, but they were opposed to this
10 recommendation of the City, I know that.

11 In a small percentage of cases, the employer
12 recovers a much larger amount than he has paid out, by
13 reason of the fact that a substantial amount is awarded
14 as general damages. In the City of Toronto, the surplus
15 is given to the workman, and a by-law has been passed
16 to this effect. It is felt that the employer should not
17 profit as a result of any injury to an individual
18 employee. The Legislature has already permitted the City
19 of Toronto to follow this policy of paying any surplus
20 to the workman by enacting private legislation -- The
21 City of Toronto Act (2), 1946 C. 142, S.6.

22 THE COMMISSIONER: They got that legislation
23 through where they are going to pay it over, and now
24 they want further protection.

25 6. MR. GUTHRIE: In the alternative, the
26 legislature could, it is submitted, provide that an
27 agreement between the employer and the workman, that in
28 consideration of payment over to the workman of such
29 excess monies, the said excess monies are to stand as a
30 credit against any further claims by the workman for the



1 same injury or disability, is valid, notwithstanding the
2 provisions of S.18 of the Act.

3 This is to do the same thing by agreement.

4 7. It is submitted that it would be useful
5 and beneficial that the legislation be amended to
6 provide that, in subrogated actions brought by Schedule 2
7 employers, a list of Workmen's Compensation Awards and
8 medical aid payments which have been authorized by the
9 Board, certified by a proper officer of the Board, shall
10 be prima facie evidence that the workman has incurred
11 such expenses in respect of any given accident.

12 Section 73 doesn't really go that far.
13 There is a provision for certified copies of entries
14 in any book or record of the Board. Well, perhaps it
15 would go far enough, sir, because the amount paid out
16 would be a matter of entry or record in the Board's
17 books, so that might be sufficient as it is.

18 8. Section 52 of the Act provides that every
19 physician, surgeon, hospital official or other person,
20 attending, consulted respecting, or having the care of,
21 any workman, shall furnish to the Board, from time to
22 time, without additional charge, such reports as may
23 be required by the Board in respect of such workman.
24 Some difficulty has been encountered in actions
25 brought by the City in the name of a workman in
26 obtaining proper medical reports. It is suggested that
27 S.52 be amended to make such section applicable to
28 employers individually liable to pay compensation who
29 are subrogated to the rights of a workman under S.9
30 (3) of the Act.



9. It is submitted that a new provision should be inserted in the Act to the effect that any workman in receipt of benefits under the Act be required to render such reasonable assistance as may be required by an employer subrogated to the rights of the workman under S.9 (3) of the Act, with the proviso that the workman should not be put to any expense by reason of such assistance.

All of which is respectfully submitted.

W.R. CALLOW, Q.C.,
City Solicitor.

With the exception of the railway brief referred to this morning, I think that is the only treatment we have of the third party section, sir.

I might once again ask if anyone present has any matter now to bring before the Royal Commission.

THE COMMISSIONER: If there is nothing further, we will adjourn until ten a.m. tomorrow morning.

---Whereupon the Commission adjourned until tomorrow at ten o'clock a.m.

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1 ---On commencing at ten o'clock a.m.

2
3 MR. GUTHRIE: Mr. Commissioner, Mr. Draper
4 of the Workmen's Compensation Board was asked to prepare
5 for submission certain statistics relating to accident
6 prevention, and I believe that he has those available
7 now and would like to proceed with that matter. Mr.
8 Draper.

9 MR. DRAPER: Mr. Commissioner, at your
10 request the Board has been able to update certain of
11 the tables contained in the report of the Labour Safety
12 Council to the Honourable H. L. Rowntree, Minister of
13 Labour, dated January, 1965. Those reports we have
14 been able to update, sir, we submit for your
15 consideration.

16 THE COMMISSIONER: You might just enumerate
17 them, please.

18 MR. DRAPER: Fine, sir. They are those
19 charts shown on page 11, page 12, and page 18.
20 Unfortunately, we were unable to determine the base used
21 in the construction of the charts on pages 16 and 17, and
22 as a result we have been unable to bring those up to
23 date. I might add, sir, that the charts contained in
24 this report were not originally compiled by the staff
25 of the Board, although certain statistics made available
26 to the Labour Safety Council by the Board were
27 incorporated therein.

28 THE COMMISSIONER: You might put those in
29 as exhibits, please.

30 THE SECRETARY: 49, 50, 51.



1 ---EXHIBIT NO. 49:

Reports of Construction
Safety Association and
Industrial Accident Prevention
Association.

2
3
4 ---EXHIBIT NO. 50:

Report on Grants to Prevention
Associations.

5
6
7 ---EXHIBIT NO. 51:

Report for 1966 on FPAPA,
OPPMSA, LAPA, TSA,
CSAEUSA, MAPA.

8
9
10 MR. DRAPER: STATISTICAL AND INFORMATION
11 SERVICES TO THE SAFETY ASSOCIATIONS
12 DEVELOPING SERVICES
13

14 Prior to the introduction of data
15 processing equipment at the Board, the information and
16 statistics provided to the Associations consisted
17 largely of copies of the Board forms and the tables and
18 data contained in the Board's Annual Report. Because
19 statistical evaluation of a year's operation could not
20 commence until all data for that year was in there were
21 lengthy delays in providing significant data.

22 In recent years with the introduction of
23 computers the volume and value of data supplied to the
24 Associations has increased and the delay in producing
25 the Annual Report has been reduced.

26 The most significant development in the
27 past two years has been the development of the Section
28 86 (6a) program. Through this program and its related
29 data processing procedures the Associations are now
30 provided with useful, valid information concerning



1 employers whose accident cost and frequency are above
2 average. This pinpoints the firms on whom the
3 Associations must concentrate their efforts for accident
4 prevention and safety education programs.

5 DATA PROVIDED

6
7 Data is provided to the Associations as soon
8 as it is available. This information may be on a daily,
9 weekly, monthly or yearly basis, depending on the
10 availability to the Board of the original material.

11 DAILY INFORMATION

12
13 Each working day the Associations are
14 provided with:

- 15 (1) Copies of all claim summary sheets
16 concerning compensation cases approved
17 the previous day. Summaries contain
18 firm number, rate number, claim number,
19 employer and workman's name and address,
20 accident date and a brief history of
21 accident and injury. This data is a
22 by-product of the initial payment to the
23 workman.
- 24 (2) A copy of the Board's initial information
25 on each new fatal accident is usually
26 supplied as soon as the Board receives
27 the information.

28 WEEKLY INFORMATION

29
30 Data concerning employers is collected and



supplied to the Associations on a weekly basis as follows:

- (1) A copy of the initial information concerning each new employer coming under the Act.
- (2) Correction cards for existing employer records showing changes in name, address or ownership.
- (3) Details of employers discontinuing operations.

MONTHLY INFORMATION

Each month the Associations are sent a copy of the Monthly Accident Cost Statement concerning employers in their classes of industry. These statements list payments for benefits by firm and by claim within the firm. The statement also shows month and year to date totals by employer. Some of the Associations relate these figures to their copies of the claims summaries.

YEARLY INFORMATION

Certain reports are available on a yearly basis and are completed when all the related data is available. Copies are sent to the Associations of the following yearly reports:

- (1) Breakdown of Accident Cost by Rate Number.
- (2) Provisional Frequency Rates by Firm and Rate Number.
- (3) Final Frequency Rates by Firm and Rate



Number.

- (4) Listing of Receipts and Costs by Firm
Number Within Rate Number, showing
- (a) lifetime experience
 - (b) individual years experience over
past five years
- (5) Listing of Firms Eligible for Increased
Assessments Under Section 86 (6a) by Firm
Within Rate Number, showing
- (a) lifetime receipts and costs
 - (b) receipts and costs in each of past
three years
 - (c) payroll in each of past three years
 - (d) number of compensation cases in each
of past three years
 - (e) firm frequency rate in each of past
three years
 - (f) rate number frequency in each of
past three years
 - (g) name and address of firm.

SPECIAL INFORMATION FOR INDIVIDUAL ASSOCIATIONS

Several Associations have requested special
yearly reports. These are supplied as follows:

TRANSPORTATION SAFETY ASSOCIATION

Breakdown of Accident Cost by rate number
for Class 20 - i.e. deferred awards, compensation,
capitalized values, medical aid, payroll, receipts,
rehabilitation.



INDUSTRIAL ACCIDENT PREVENTION ASSOCIATIONS

(a) Statement by rate number showing receipts, accident cost, and an indication of the rate numbers experiencing a loss in residual balance.

THE COMMISSIONER: What do you mean by "residual balance"?

MR. DRAPER: The balance that remains from previous years in the rate number.

(b) Average rate of assessment - I. A. P. A.
- Schedule I

FOREST PRODUCTS ACCIDENT PREVENTION ASSOCIATION

(a) Statement of experience rating adjustments by firm number within rate number.

(b) Statement of receipts, accident cost, etc., required for Forest Products Accident Prevention Association Annual Report.

MINES ACCIDENT PREVENTION ASSOCIATION

Count of firms in Class 5 by rate number.

ALL ASSOCIATIONS

All Associations receive assessment rates immediately they are approved by the Board.

COMPUTER OPERATIONS

Virtually all data supplied to the Associations is produced through the Board's computer operations. Computer output is governed primarily by



two factors, input and the type of computer involved.

OUTPUT

Output information from the computer can only be provided on the basis of input taken from information supplied to the Board by the Association members, the employers of Ontario. This information comes from two sources, primarily accident reports and payroll statements.

Accidents must be reported to the Board within three days of the happening and are generally completed by bookkeepers, first aid attendants or job foremen. They contain basically the data required by the Board for determining entitlement. They do not contain all of the detail concerning an accident which might be necessary from an accident prevention standpoint.

Payroll statements are made annually and contain only that data which is required by the Board for assessment purposes. If additional data were required by the Board to satisfy the needs of the Associations it could only be achieved by expanding our requirements of the employers. For an employer to assume the task of collecting data for the Board on each of his operations would involve additional expense and time.

TYPE OF COMPUTER

The Board's existing data processing operations utilize sequential records on magnetic tape.



1 With this type of record in which all names
2 and addresses are on one set of tapes, all assessment
3 records on another set, and such records are sequential,
4 mass processing on a sequential basis is the only
5 practical approach. For this reason data is accumulated
6 for weekly, monthly, or yearly runs so that the maximum
7 number of records may be updated in each operation.
8 Similarly, each separate operate requires an individual
9 program and an individual pass through the computer
10 to prepare the data for the next operation. From this
11 it may be seen that it is not practical to run several
12 long programs through the computer to extract data
13 concerning an individual firm's experience or record
14 since it would take the same amount of time as the
15 regular run for all firms.

16 Computer operating time is already fully
17 scheduled and overtime is also scheduled. This is
18 done to ensure that we may continue to perform our
19 major function, which is the payment of compensation
20 to injured workmen, without delay.

21 NEW COMPUTER OPERATIONS

22
23 New types of computers are now being
24 developed which permit a different approach to data
25 processing. The Board is already converting to the new
26 equipment and our information handling programs are
27 being completely redesigned to take full advantage of
28 the new methods. This is a long-term proposition and
29 many man-years of programming are required.

30 The final stage of conversion will be in



1 1969 when large-scale computers will be delivered and put
2 into operation. Unlike present equipment which requires
3 sequential handling and separate programs, the new
4 equipment will be randomly accessible and has huge
5 storage capacity so that access is possible to many
6 different kind of records simultaneously. This will
7 enable the Board to keep all records current and produce
8 up-to-date reports on a program interrupt basis. This
9 means that inquiries may be made on the computer
10 concerning data in storage, while the machine is doing
11 other work, without manual intervention. Thus, many
12 aspects of our present information service now given on
13 a monthly or annual basis will be available much more
14 frequently.

15 INFORMATION SERVICE PLANNING

16
17 Computer equipment is expensive and must
18 be operated in a responsible manner. The Board, in
19 planning for its new computer operations, must assess,
20 in addition to its own requirements, the needs of the
21 associations for various kinds of data and must
22 determine which needs are common to all associations
23 and which must be catered for on an individual basis.

24 Each of the associations and the Department
25 of Labour have been asked to determine their statistical
26 and information requirements for the future. Their
27 requests are many and varied. Some of the requests
28 are for detailed items such as actual man-hours worked
29 on each of an employer's operations. Some are general
30 such as a request for a basis for measuring success of



1 the safety education effort.

2 All of these requests must be analyzed and
3 related to present and future capacity to determine which
4 we can satisfy from present information output, which
5 justify asking employers to provide new types of infor-
6 mation and which would not contribute sufficient value
7 in safety education programs to warrant the cost
8 involved. At present authority does not exist under
9 which the Board could require employers to report such
10 data.

11 Some of the requests, such as that for
12 exact details of man-hours worked, would require all the
13 employers in the province to maintain additional records
14 and make frequent reports to the Board. The Board must
15 evaluate such request against existing methods. In this
16 instance the Board presently calculates man-hours worked
17 using existing financial information from employers and
18 other data from the Dominion Bureau of Statistics.

19 PRESENT PLANS

20
21 Our present plans are based on the concept
22 that computer programs can be designed to provide advance
23 indications of those employers requiring remedial action,
24 and that subsequent reevaluation will indicate the extent
25 of an improvement which has taken place. The Section 86
26 (6a) program and listings are based on this principle.

27 We are studying with the Associations
28 other bench marks which could be established in
29 identifying those employers whose safety education
30 programs have deteriorated to the point where assistance



1 from the Associations is necessary.

2 The Labour Safety Council of Ontario has
3 recently made a grant to the University of Waterloo to
4 conduct an independent analysis of the statistical
5 requirements of all the organizations involved. The
6 results of this study will be of value to the Board
7 in assessing its future programs and the philosophy on
8 which they are based

*Nethercut & Young**Toronto, Ontario*

1 THE COMMISSIONER: The Labour Safety Council
2 has recently made a grant to the University of Waterloo
3 to conduct an analysis of statistical requirements. Are
4 these industrial safety associations alone?

5 MR. DRAPER: No, sir, it is my understanding
6 that the base on which this analysis is being made is
7 to determine the requirements of the Department of
8 Labour in its construction safety branch and industrial
9 safety branch and other branches which may require this
10 type of statistical information, the Compensation Board
11 and the seven accident prevention associations of Ontario
12 and they will be looking into the requirements of all
13 of those units.

14 THE COMMISSIONER: Including the safety
15 associations?

16 MR. DRAPER: Yes, sir.

17 THE COMMISSIONER: Following the report in
18 1965 which you refer to as the Labour Safety Council in
19 which there were certain recommendations made regarding
20 further statistical information has there in this
21 tabulated list you have given us the information that
22 has now been given of the associations any noticeable
23 change since that time? Are they getting more
24 information than they were?

25 MR. DRAPER: Yes, sir, in one case ---

26 THE COMMISSIONER: I ask this question
27 knowing that you have in process this business of trying
28 to improve and to decide what is vital and what isn't and
29 what you can ask for and what you can't. But since that
30 time in January, 1965, when this report came out, it is



1 not so long ago, have you been able to institute any
2 changes as yet?

3 MR. DRAPER: Yes, sir, there is one byproduct
4 that is coming out that is of great use to the safety
5 associations and that is referred to in the submission.
6 As the listing of firms eligible for increased assessment
7 under Section 86 (6a) and you may recall that there was
8 considerable information supplied in that. Now, this
9 program is supplied to each of the safety associations
10 and covers those firms within its jurisdiction who are
11 in the 86 (6a) area. These are the firms that are
12 in trouble for one reason or another and it is therefore
13 an indication to the safety associations that this is a
14 good place to start on their educational work, that
15 these are the firms that need it more than the general
16 population. So this has come out since January, 1965.

17 THE COMMISSIONER: And how fast are you
18 able to process that information and get it to them
19 when you realize a company is in danger?

20 MR. DRAPER: This information was given to
21 the safety associations last month and the information
22 contained in the report covers the calendar years 1965,
23 1964 and 1963 for those firms who are in an 86 (6a)
24 condition.

25 THE COMMISSIONER: There is not as yet any
26 program of notifying them week by week or month by month
27 of firms that are in this danger area?

28 MR. DRAPER: No, sir, there is not at
29 present. This is one of the things that we have been
30 considering. The problem as we now face it with the



1 equipment we have and with the information we have in the
2 equipment providing the base against which a comparison
3 can be made is one of extracting it promptly when a firm
4 reaches a dangerous position and it has been suggested
5 that our statistical program for safety education could
6 be modified so that the computer could be programmed
7 to indicate when a firm reached a predetermined danger
8 point in its accident history. For example, it might
9 be when their costs for this year pass their equivalent
10 costs for the same period last year by 25 percent, when
11 they have two fatalities, or in the case of a larger
12 firm, when they have five accidents in one week. These
13 bench marks could be established and incorporated into
14 the computer so that as claims are entered, the details
15 of the claims are entered into the computer a warning
16 would come from the computer indicating that this firm
17 has now passed with the addition of this last claim its
18 predetermined danger point. This would then serve as an
19 indication which could be passed to the associations that
20 this firm has hit this danger point and a personal
21 investigation is now a requirement. The computer would
22 not indicate why it had spelled this out ---

23 THE COMMISSIONER: A kind of red light, in
24 other words?

25 MR. DRAPER: That is correct, sir.

26 THE COMMISSIONER: And how frequently would
27 that go? Would that go to them every time the red light
28 appeared? Not necessarily at regular intervals?

29 MR. DRAPER: We anticipate that such a
30 warning could be given within two weeks of the



1 information being fed into the machine which means that
2 if firm A have been continuing this for this year and
3 had a claim entered today that tilted them in the
4 dangerous direction that within two weeks of today's
5 date the associations would be so advised that on
6 November 29th this firm hit the danger point.

7 Then I would imagine the procedure would
8 be for the management counsellor or the field man from
9 the association to refer to the Board why is this firm
10 now in trouble?

11 THE COMMISSIONER: That is one of the
12 things I intended to ask you. When you get a situation
13 where you are going to impose the penalties under 86 (6a)
14 does the Board then work with the particular association
15 in connection with that particular company? What
16 occurs then when you get that, apart from notifying the
17 company you are going to put the penalty on, or do you
18 do something before you put the penalty on?

19 MR. DRAPER: At present, sir, those
20 companies who are liable for an 86 (6a) assessment this
21 year may not yet have been notified but the associations
22 are already aware that these companies are in this
23 position. In the case of the second offence where a
24 company may be coming up for the second time for
25 consideration of 86 (6a) the safety associations are
26 asked to submit a report on that company's safety
27 program to the Board for consideration before the
28 notice of assessment goes out. But in the case of the
29 first offence they would be requested to submit a
30 report on the safety program of that company should the



1 company appeal the assessment.

2 THE COMMISSIONER: I understand from you
3 that you have requested from what you have said in this
4 memorandum ~~that~~ requests were made to the safety departments
5 and the Department of Labour and to your own associations
6 for what statistical information they required or
7 thought they required in connection with their safety
8 programs.

9 MR. DRAPER: That is correct, sir.

10 THE COMMISSIONER: And that the demands
11 are apparently sufficiently wide and involved to
12 justify this inquiry by the Labour Council.

13 MR. DRAPER: I think this is a true state-
14 ment, sir. They are varied. The problem is one of
15 providing the basic information into the machine. It is
16 physically possible to do everything that is requested
17 by everyone, but not within the abilities of the
18 equipment the Board presently has or anticipates
19 receiving, but on the broad basis you can compute
20 anything. It then became a requirement of determining
21 where does the law of diminishing returns come into
22 this? You can spend only so much money on computer
23 equipment to provide a service from which you will get
24 significant results and our problem has been to
25 determine how much of this information is a requirement.
26 Once we have determined how much is a requirement, we
27 have to secure the basic information and the only place
28 this can come from in our estimation is the employer of
29 Ontario.

30 We would have to ask him for a terrific



1 amount of statistical background from his firm to
2 provide the base and give all of the information required.
3 We have neither the authority to do that at this point,
4 to demand that he provide this information and it is
5 doubtful whether a request for this information would be
6 well received as he would have to engage a considerable
7 staff in order to provide the breakdown. This has been
8 the problem that has faced my department within the
9 Board. How could we provide this statistical
10 information and is it going to do any good or really in
11 the area of safety education and accident prevention
12 really is not a requirement for that one facet and that
13 facet only that of knowing when a firm reaches a danger
14 point so that you can concentrate on that firm.

15 THE COMMISSIONER: In other words, you are
16 going to inquire into the possibility of demanding from
17 the various industries all this additional information
18 that some of the associations and others have requested
19 and then you are going to inquire into the possibility
20 of processing it and then you are going to consider
21 whether actually all of this was necessary in view of
22 this other red light that you are able to flash under
23 your present operating system or under the system which
24 is now going into effect, am I correct? Am I stating
25 that correctly?

26 MR. DRAPER: Yes, sir.

27 THE COMMISSIONER: I think, Mr. Draper, that
28 that satisfies the questions I have in mind. I don't know
29 what Mr. Guthrie has.
30



1 MR. GUTHRIE: Just one or two things, Mr.
2 Draper. On this question of authority, I am looking at
3 Section 115 of the Act which seems to be the one under
4 which you can require a report and after listing the
5 specific items that the employer must include in his
6 report then it goes on to say: "And shall in any case
7 furnish such further details and particulars respecting
8 any accident or claim to compensation as the Board may
9 require", that is the employer shall.

10 I am just wondering if you are suggesting
11 here in your memorandum that some broadening of that
12 would help the Board or do you think that is enough as
13 it is?

14 MR. DRAPER: I think that applies to
15 information that the Board can't request, seek or demand
16 after an accident and relates to that accident. Our
17 concern is not the amount of information that we can
18 secure concerning any individual accident, there is no
19 problem there at all, but the problem is to provide the
20 base of information in advance of any accident so that
21 we have some basic statistics against which we can
22 compare any individual cases to see whether there is a
23 trend.

24 MR. GUTHRIE: The information of a more
25 general nature, man-hours worked, for example?

26 MR. DRAPER: That is right. If we had to
27 determine the man-hours worked using power tools, for
28 instance, this information would have to come from the
29 employers and in order to provide a basis for this we
30 should know the man-hours worked in the province in any



1 one year or a period of time using power tools so that
2 accidents involving power tools could be compared to the
3 total population and maybe only have three accident in
4 two or three million man-hours on that project, but in
5 order to be able to determine the statistical significance
6 of the occurrence of these accidents we must have a broad
7 base. We don't have the authority to get the broad base.

8 MR.GUTHRIE: Are you suggesting to this
9 Commission that that authority would be a desirable
10 thing at this time?

11 MR. DRAPER: No, sir, I am not.

12 MR.GUTHRIE: On the first page of your
13 memorandum the first item that you provide on a daily
14 basis to the associations is a copy of the claims
15 summary sheet. Is this sort of a file cover idea?

16 MR. DRAPER: This is our form 25-A. It
17 gives basic information to the associations on an
18 accident as it is being reported.

19 MR. GUTHRIE: Who prepares it, the Claims
20 Officer?

21 MR. DRAPER: It is prepared in the Claims
22 Department, yes, but not by the Claims Officer. It is
23 a summary of the information contained on the form 7
24 report of the accident.

25 MR. GUTHRIE: Does it include medical
26 matters, or is it just the name and date?

27 MR. DRAPER: As stated here, the firm,
28 rate number, claim number, employer, workman's name and
29 address and the date, history of the accident and
30 a brief description.



1 MR. GUTHRIE: With a view to flagging for
2 the associations anything that is of concern to the
3 Board about a particular accident, does the person who
4 prepares that summary have to write any comment, or is it
5 purely factual? Does he ever say "this should be followed
6 up, we have had a lot of these"?

7 MR. DRAPER: Very seldom.

8 MR. GUTHRIE: The Board does not comment on
9 these, it would seem.

10 MR. DRAPER: No.

11 MR. GUTHRIE: Thank you, Mr. Draper.

12 Mr. Commissioner, I think Mr. Gibson of the
13 Department of Labour has a brief comment to make on this
14 same point and we might follow on with him at this time.

15 MR. GIBSON: Mr. Commissioner, the purpose
16 of my appearance here this morning is to emphasize that
17 the Department of Labour needs accident statistics to
18 do its work. They play an important part in the
19 prevention of accidents, chiefly because the facts of no
20 one individual accident or of those relating to small
21 groups of accidents can properly be held to represent a
22 general province-wide or even an industry-wide situation.
23 Mass data, when properly collected and analyzed can
24 indicate trouble spots which need more emphasis or
25 different approaches. It can supply information for an
26 overall administrative review and can permit a measure of
27 present and past performance comparison.

28 The Workmen's Compensation Board has in the
29 past produced into these statistics on an annual basis.
30 These were not released until much later the following



1 year and retained historical value only for the
2 Department of Labour. The directors of our Industrial
3 and Construction Safety Branches require that as much
4 statistical information as possible be released monthly.
5 Although monthly data may not be as extensive and
6 complete as an annual report, it should be stressed that
7 some measure of performance and evidence of accident
8 characteristics should be available as quickly as
9 possible for each month.

10 Under the Trench Excavators Protection Act
11 the employers are obliged to report their accidents to
12 the chief officer, that is Section 22 (a) of that Act.
13 That program started the 1st of January, 1966. Under
14 Section 19 (b) of the Construction Safety Act employers
15 are similarly obliged to report accidents causing loss
16 of time of three days or more. Under Section 48 of
17 Ontario Regulation 1-6 of 1964 under the Industrial
18 Safety Act employers are obliged to submit accident
19 reports to the Chief Inspector.

20 when
21 It is our desire that ~~an~~ accident report
22 made out by an employer ~~that~~ goes to the Workmen's
23 Compensation Board, that the same information
24 simultaneously come to us either as it does now through
25 a copy of that report ~~being~~ sent or from the Board to us.

26 THE COMMISSIONER: At the moment you get a
27 copy of all accident reports to the Board, do you?

28 MR. GIBSON: The employer sends it to us.
29 He can send us a carbon copy of form 7 which we accept.

30 THE COMMISSIONER: What are you requesting,
then, in addition to that?



1 MR. GIBSON: If possible, that only one
2 report by the employer be necessary, that he send it to
3 the Board and that the information then come to us. It
4 is in an effort to streamline reporting.

5 THE COMMISSIONER: It means the employer
6 doesn't have to make out a carbon copy, but it means
7 that you have to have two reports. The report goes to
8 the Board and the Board has to report to you.

9 MR. GIBSON: That is right, yes.

10 THE COMMISSIONER: Do you think that would
11 be an improvement?

12 MR. GIBSON: Employers, I think as a whole
13 sometimes forget to make the carbon for one thing, and
14 if we could be sure ---- more accidents are reported to
15 the Board than to us, we are sure of that; in other
16 words, there are cases where employers are failing to
17 report to us.

18 THE COMMISSIONER: But you would ask the
19 Board to send you the individual reports?

20 MR. GIBSON: If we could get it, yes.

21 The present method seemed to be the most
22 direct way of doing it if we got every report.

23 The retention of the University of Waterloo
24 people is a later development. We put all the
25 questions to the Workmen's Compensation Board last spring
26 and it is only recently that this arrangement has been
27 made with the University of Waterloo and it will have an
28 effect on what we will end up with which we formerly
29 requested. We need statistics to do our work and we need
30 more than we are getting now.



1 THE COMMISSIONER: Well, the more you get no
2 doubt the better, but it is also a question of how much
3 you can ask industry to supply, I suppose you are aware
4 of that too.

5 MR. GIBSON: Yes. It is in the area of man-
6 hours worked which I think is the biggest single problem.

7 THE COMMISSIONER: If a man is working at
8 the top of the Toronto-Dominion Bank it might be hard to
9 know whether he is using a power saw or how many man-
10 hours he is putting in on that and on something else.

11 MR. GIBSON: Yes, it is carrying it to the
12 nth degree. It might not be necessary, that fine a
13 breakdown.

14 THE COMMISSIONER: Have you any questions,
15 Mr. Guthrie?

16 MR. GUTHRIE: No, I have no questions.

17 Mr. Commissioner, Mr. Culliton and his
18 colleagues of the International Railway Brotherhoods
19 are with us this morning and would like to address the
20 Commission.

21 THE COMMISSIONER: I don't know what progress
22 we are going to make today. We sat yesterday for the
23 hearing of any submissions in reply, but did not have
24 many people turn up yesterday. As a consequence, we
25 had a very short morning, but we had previously made
26 arrangements for the present representations to be made
27 through some errors that occurred. They did not receive
28 notice when others received notice of the hearings that
29 were being held. As a consequence, we will have to
30 proceed now with these submissions, which are submissions



Nethercut & Young

Toronto, Ontario

2034

1 on all points and if time is available we can then hear
2 submissions in reply from those who are here for that
3 purpose.
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L/SS 1 What is your name, please?

2 MR. CULLITON: F. J. Culliton.

3 MR. GUTHRIE: Mr. Culliton, would you like
4 to introduce the other gentlemen who are with you.

5 MR. CULLITON: On my far left is Mr. J. A.
6 Devlin of the Brotherhood of Maintenance of Way Employees;
7 Mr. R. F. Hounscome of the Brotherhood of Locomotive
8 Engineers; Mr. Joe Martindale of the Brotherhood of
9 Locomotive Firemen and Enginemen.

10 TO: The Honourable George Argo McGillivray
11 Your Lordship:

12 This joint committee representing the
13 following International Railway Organizations in the
14 Province of Ontario,

15 Brotherhood of Railroad Trainmen

16 Brotherhood of Locomotive Engineers

17 Brotherhood of Maintenance of Way Employees

18 Brotherhood of Locomotive Firemen and
19 Enginemen

20 Transportation - Communication Employees
21 Union

22 appreciates the opportunity of appearing before this
23 Commission of Inquiry into the Workmen's Compensation
24 Act.

25 The representations we have been making
26 to the Government, and which we now wish to place before
27 you with supporting arguments, have been carefully
28 drafted, to cover problems encountered when progressing
29 benefit claims for the employees we have the honour to
30 represent.



1 We wish to state at the outset that our
2 committee enjoys a very harmonious relationship with
3 officers and staff of the Ontario Workmen's Compensation
4 Board, who are responsible for administering the Act, in
5 providing due and just compensation to those who are
6 disabled as a result of an accident or industrial
7 disease during the course of their employment.

8 We respectfully submit for your considera-
9 tion the following proposed amendments to the Ontario
10 Workmen's Compensation Act. In doing so, we recognize that
11 the principle on which the Act is based extends to the
12 workman protection for all accidents arising out of and
13 in the course of the employment; it places the
14 adjudication of claims in the hands of the Workmen's
15 Compensation Board; and in most of the industries to
16 which it applies, makes the employer's liability collec-
17 tive instead of individual.

18 WAITING PERIOD

19
20 We recommend that Section 3, Subsection (1)
21 (a) be amended to read as follows:

22 "If the injury does not disable the
23 workman longer than the day of the
24 accident, no compensation other
25 than medical aid shall be paid, but
26 if injury disables the workman longer
27 than the day of the accident compensation
28 shall be payable from and including
29 the day following the accident."

30 This proposed amendment of the waiting



1 period to one day is in line with Workmen's Compensation
2 Acts now in effect in Alberta, Manitoba, Newfoundland,
3 Prince Edward Island and Saskatchewan.

4 If I may make a comment, I noticed in the
5 newspapers it is in the Northwest Territories, too, just
6 the other day.

7 At present when an employee is injured
8 causing disablement for three days or less the workman
9 is entitled to medical treatment but without compensa-
10 tion. When the disablement is for four days or more
11 Workmen's Compensation benefits are available to the
12 claimant. Since the purpose of the Act is to compensate
13 the injured workman for loss of earnings, we contend
14 there is no valid reason why the injured workman should
15 wait longer than one day to qualify for compensation.
16 Under the proposed amendment compensation will not be
17 payable for disability that lasts for one day.
18 However, if the disability lasts for a longer period,
19 compensation shall be paid from and including the date
20 after the accident.

21 During the recent hearings held before the
22 Honourable Mr. Justice Charles W. Tysoe, into the
23 inquiry of the British Columbia Workmen's Compensation
24 Act, Mr. Sigler, counsel for the Board, stated:

25 "The position of the Workmen's
26 Compensation Board is that careful
27 consideration be given to the elimi-
28 nation of the waiting period to elimi-
29 nate the present period of three days,
30 so that, administratively, the work



would be made easier for the Board and be
no more costly in the opinion of the Board.⁹⁹

We are of the opinion that this proposed
amendment would not be an administrative problem and
would speed up the handling of claims by avoiding many
enquiries and thus would reduce overall costs.

BURIAL EXPENSES

Section 37, Subsection (1) (a). We
recommend recommend that the necessary expenses of the
burial of the workman not exceed \$700.00, and in
addition an allowance for the actual cost of the burial
plot.

A survey indicates that the average cost
of burial is increasing and the present allowance does
not meet the cost of an appropriate burial. We suggest
consideration be given to provide a like suitable
allowance for burial of the widow as many widows who
have worked to raise their families do not leave
sufficient resources to provide for their burial.

PAYMENT TO WIDOW OR INVALID HUSBAND

Section 37, Subsection (1) (c). We
recommend this section be amended to provide a monthly
payment of \$125.00.

We believe this to be an equitable amount
in view of increased living costs.

PAYMENTS FOR CHILDREN OF DECEASED WORKMEN

Amend Section 37 to provide a payment of



1 \$60.00 per month to dependent children and \$75.00 per
2 month to orphan children and where there are three or
3 more dependents or orphan dependents the payments on the
4 whole should be increased accordingly.

5 I could make a comment at this time. We
6 feel that the payments should be based on the relationship
7 to a man's earnings. If he is hurt the family's standard
8 of living will be lower. This is why we ask for the
9 increase.

10 SECTION - I - TEMPORARY TOTAL DISABILITY

11 A workman is on a payroll and employed
12 at the time of his accident, otherwise he would have
13 entitlement to benefits under the Act. The injuries
14 resulting from the accident have taken him completely
15 outside the labour force and it is our contention that
16 he should be entitled to full compensation payments
17 until he is returned to employment. Too frequently a
18 doctor reports an injured workman as fit for "light
19 work" and on receipt of such a report compensation
20 payments are immediately reduced. The healing period and
21 the disability have not matured, the man is unable to
22 resume his usual employment or to find employment for
23 which he is fit. No employment is offered by the
24 employer in whose service the disability occurred. This
25 man, still incapacitated and unemployed, is thrown onto
26 the labour market on his own impaired resources, but with
27 50 percent or 25 percent of benefits being paid.

28 We submit that the principle of Workmen's
29 Compensation intends that compensation be paid while the
30 disability lasts, which should be continued until such



time as he is able to resume his usual occupation.

In keeping with that principle, no such reduction in temporary disability payments as above described should be permitted.

WAGE CEILING ON WHICH COMPENSATION IS PAID

Section 44, and all other relevant sections.

We believe that the wage ceiling on earnings which is considered in the computation of benefits should be abolished so as to include the yearly earnings of all workmen. No compensation is payable on earnings in excess of \$6,000.00. This limitation decreases the percentage of compensation and increases the wage loss for workmen earning in excess of that amount. There is no justification for denying equitable compensation to the injured workman whose average annual earnings exceed \$6,000.00.

EXAMPLE (presently in effect).

| Annual Earnings | Allowed Percentage | Compensation Allowed | Actual Wage Loss | Actual Percentage of Earnings |
|-----------------|--------------------|----------------------|------------------|-------------------------------|
| \$6,000 | 75% | \$4,500 | \$1,500 | 75% |
| \$6,500 | 75% | \$4,500 | \$2,000 | 69.24% |
| \$7,000 | 75% | \$4,500 | \$2,500 | 64.40% |
| \$7,500 | 75% | \$4,500 | \$3,000 | 60.01% |
| \$8,000 | 75% | \$4,500 | \$3,500 | 56.25% |



1 As the earnings go up the percentage goes
2 down.

3 One of the fundamentals enunciated by Sir
4 William Meredith was that during periods of disability
5 a workman should receive a percentage of his earnings.
6 When Sir William made his report in 1914, stating an
7 annual salary limit of \$2,000.00, he did so to differen-
8 tiate between the employer and the work people. Bear in
9 mind that most employers in those days were persons
10 actually directing company policy and were in the main
11 entrepreneurs. Bear in mind also that the wage rate for
12 skilled machinists at that time, as an illustration, was
13 approximately eleven cents per hour.

14 It is our contention that workmen during
15 periods of total temporary compensable disability
16 should receive a minimum of 80% of actual earnings.
17 Because so many work people earn in excess of \$6,000.00
18 per year, at the present time their compensation payments
19 are, in essence, only forty, fifty or possibly fifty-five
20 percent of earnings.

21 The Act, and Board responsible for its
22 administration, are the sole means for the protection of
23 the injured workman in lieu of all common law rights.

24 That factor was a basic principle upon
25 which the Act was originally founded and it has
26 survived the test of time despite frequent proposals of
27 various forms of review that would require litigation,
28 contrary to the original and confirmed principles of the
29 Act. Our experience with the Board for many years has
30 indicated a desire to deal fairly, firmly and promptly



1 in the adjudication of claims.

2 We are mindful of the prompt relief that
3 can be and should be afforded disabled workers and
4 dependents by the Board under its authority, but there
5 is a growing lack of confidence in the Board and
6 administration due to the recent changes that have been
7 made.

8 This matter was brought to the floor of the
9 Legislature of Ontario during the Evening Session of
10 Monday, June 20, 1966.

11 During the debate mention was made of the
12 report of the Honourable Justice Tysoe to support the
13 new appeal system instituted during the past year. It
14 has been our experience that this new system is delaying
15 the adjudication of claims, thus depriving the workman
16 of his right to benefits under the Act, causing an
17 unnecessary hardship for the man and his family.

18 Mr. Justice Tysoe, in his report stated,
19 and we quote:

20 "I cannot see the necessity in
21 British Columbia of both a Board
22 of Review and an Appeal Tribunal
23 as in Ontario. My impression is that
24 the former can perform the functions
25 of both, and it is my intention that
26 it should do so."

27 As Mr. Justice Tysoe did not recommend this
28 appeal system and did support our former procedure of
29 appeal; and as representatives of our members, we
30 receive so many complaints of delays and et cetera,



1 since this new system was instituted, we feel that a
2 thorough study should be made of the Administration, the
3 handling of claims, and the new appeal system, to
4 determine the cost and efficiency of same.

5 If I would be permitted to make a few more
6 comments on this, Mr. Commissioner.

7 THE COMMISSIONER: Yes. We will have some
8 questions to ask.

9 MR. CULLITON: Although we dealt briefly
10 in our submission of August, 1966, with the present
11 system of adjudicating claims and appeals procedure, we
12 now wish to enlarge on the subject in view of information
13 that has come to us concerning the overall efficiency of
14 claims handling procedure introduced by the Board in
15 March, 1965.

16 It is the position of our Committee that
17 the present claims handling system is too complicated,
18 unnecessarily formal and time-consuming. The present
19 procedure places the worker at a disadvantage in obtaining
20 just treatment under the Act because of the two
21 administrative levels which he must go through before
22 obtaining a hearing at which representation can be made
23 on his behalf. We suspect that at the first level of
24 adjudication a claim is often rejected simply because
25 the Review Committee is there to handle "sticky" cases
26 and thus responsibility for a fair application of the
27 Act where the worker gets the benefit of the doubt is
28 passed along to the Review Committee. The procedure
29 followed by the Review Committee of investigating
30 claims without holding hearings and of rendering



1 decisions without reasons for such decisions creates a
2 feeling of doubt in the minds of workers concerning the
3 fairness of the system presently in effect. The next
4 step in the appeals procedure, the Appeal Tribunal,
5 creates a courtroom atmosphere where the workman is
6 referred to as appellant, his union or other
7 representative as counsel, and where witnesses are sworn
8 in. All of this suggests a growing bureaucracy within
9 the Ontario Workmen's Compensation Board, an organization
10 that two short years ago was the model of efficiency for
11 all similar organizations the world over. For years
12 the Ontario Board was the only Board where unions had
13 direct access to Board members. Now the Ontario Board
14 is the only one where this situation does not exist.

15 THE COMMISSIONER: Isn't that a
16 contradiction? You said, if I understood you, that the
17 Ontario Board was the only one where you had direct
18 access to Board members.

19 MR. CULLITON: Where you do not have
20 direct access.

21 THE COMMISSIONER: You said you did have
22 direct access.

23 MR. CULLITON: Yes, up to 1965. We don't
24 have the direct access that we used to have.

25 THE COMMISSIONER: Your first statement
26 was that you did have it.

27 MR. CULLITON: For years the Ontario
28 Board was the only Board where unions had direct access.

29 THE COMMISSIONER: Have they been
30 changing?



1 MR. CULLITON: They have been changing
2 all the time. But we are concerned with is the new
3 system in Ontario where we are running into trouble. I
4 think British Columbia and Ontario are the only two
5 Boards now where you don't have direct access; with the
6 other Boards you do.

7 THE COMMISSIONER: I am afraid I don't
8 follow you on that either.

9 MR. CULLITON: Well, to give you an
10 illustration or an idea of what we are faced with, as a
11 union representative, when a claim comes to me that is
12 turned down --- each lodge has their claim representative
13 --- a compensation claim will be given to the lodge
14 member and he processes it, gives the member the
15 information to process his claim; but if the claim is
16 denied it is given to the Chairman of the Committee. Now,
17 we would contact a senior member of the Board and ask
18 what was wrong with the claim. We don't ask for any
19 favours, but possibly he will come back and say there is
20 lack of information. Then we would go back to the
21 member and he would refill the form and it would go to
22 the proper place it should have gone to in the first
23 place. As a result, in a week or ten days the claim
24 goes through or it goes to the Appeal Board. Now the
25 claim is turned down and there seems to be a rubber stamp
26 correspondence where you can appeal this claim. There is
27 a committee which passes the buck.

28 THE COMMISSIONER: How many claims did
29 you have last year, Mr. Kerr?

30 MR. KERR: Last year we had almost



1 360,000 claims, sir, of which approximately 160,000 would
2 involve the payment of compensation, the others would
3 involve medical aid claims only involving no compensation.

4 THE COMMISSIONER: Of the 160,000 how
5 many, can you tell us offhand, were turned down at the
6 claims level before it came to the Board of Review?

7 MR. KERR: Between 4% and 5% of those
8 claims would be rejected by the Claims Department.

9 THE COMMISSIONER: 4% or 5% of 160,000.
10 What is that?

11 MR. CULLITON: Am I permitted to ask
12 questions?

13 THE COMMISSIONER: Yes, but what is
14 bothering me is how much is this person capable of
15 handling in relation to his other duties. The
16 administration is becoming so great, the claims have
17 become so great that it hasn't been possible to deal with
18 them all in any given time.

19 MR. KERR: The answer would be
20 approximately 9,000 claims rejected each year of this
21 particular group.

22 THE COMMISSIONER: The claims coming
23 into the labour member must have been making it
24 impossible for him to carry on when one considers the
25 many other duties there.

26 MR. CULLITON: Since this last year and
27 a half this is the trouble we have been running into,
28 that with this rubber stamp appeal system everybody is
29 appealing. May I ask Mr. Kerr how many claims are before
30 the Appeal Board now? Why are we getting two and three



1 and four weeks waiting before we get answers to our
2 letters?

3 THE COMMISSIONER: If you have cases
4 of waiting two, three and four weeks before getting
5 answers, perhaps you could send some examples in to us.

6 MR. CULLITON: They would automatically
7 appeal, but answers are getting further and further
8 apart. We didn't have this trouble before 1965. This
9 is where our dissatisfaction is.

10 THE COMMISSIONER: Well, there is also ---
11 it might be complicating matters --- a statement made by
12 one of the unions that they propose to appeal everything.
13 They don't like the system, so they are going to appeal
14 every case, and it will jam up the operation.

15 MR. CULLITON: We appeal not to jam up
16 everything. When we had a claim we could contact these
17 men at the Department there and get this information,
18 and this would speed the case up. But we can't do it now.
19 We have no contact whatsoever with the Board, so it has
20 to go up those steps and naturally there is going to be
21 a backlog, and the man on compensation is the one who is
22 suffering.

23 THE COMMISSIONER: Do you think if you
24 had some access to the Board of Review you would be
25 better off?

26 MR. CULLITON: I think if we had a
27 system that was put in, this extra step, it would be
28 satisfactory, the old system.

29 THE COMMISSIONER: If you go back to the
30 old system, you had a claim and it was refused and then



1 you went to the Board of Review and then you went straight
2 to the Board. Once again, the work load is becoming so
3 great that it has to be filtered out and somebody else
4 has got to do some of the work that was previously done
5 by the Board. That is what I understand is the case put
6 up by the Compensation Board.

7 MR. CULLITON: Put it this way: a claim
8 goes in to the Compensation Board, it goes to the first
9 committee, Review Committee, and there is lack of
10 information and it is turned down and they say that you
11 can go to the Appeal Board, whereas in the old system we
12 would contact the senior member and they would send back
13 word saying that there was lack of information on medical
14 grounds. We were not getting any favours or fixing any
15 claims, but it prevented a lot of these steps now.

16 THE COMMISSIONER: What you have said
17 has been said by others; it has been the complaint of
18 other unions.

19 MR. CULLITON: We found out that it is
20 the fact. That is why we put this into our brief. We
21 were not in contact with anybody else; this is our own
22 committee. So if they say the same it must be universal.

23 THE COMMISSIONER: I can understand how
24 the complaint arises; but, on the other hand, the
25 situation here isn't the same, the work load here is
26 totally different from that in British Columbia, and
27 this Commission has to decide whether a change is
28 justified or whether there should be a change.

29 MR. CULLITON: That is what we submit
30 in our brief. We would like to see a change.



1 If I may go through some newspaper
2 articles, we would bring to your attention and then would
3 make comment on the Globe & Mail of October 5th, 1966,
4 to the effect that the Board has asked that a study be
5 made to see if pensions to persons permanently disabled
6 should not terminate when workmen go on retirement
7 pension or become eligible for the Canada Pension Plan.
8 Now, the railroad man is a peculiar animal, they say, in
9 one way; we work all hours of the night and everything
10 else. But in the railway industry industrial accidents
11 often impede the earning ability of the workman to the
12 extent that the railway pension plans based on service
13 and average earnings are reduced. In both the CNR and
14 CPR pension plans there is provision for a worker to
15 contribute to the pension plan while off work due to a
16 compensable injury, thus protecting the worker against
17 loss of service and the consequent reduction in pension
18 benefits.

19 THE COMMISSIONER: Up to the present, as
20 I understand it, the man was on permanent pension, whether
21 it be full pension or partial disability pension, and
22 when they reached the point where he could also get the
23 railway pension, if that was the case, or whatever other
24 pension there was, no interference in the past has
25 occurred, no change has occurred. Once he gets a
26 permanent disability pension he gets it for good. That
27 is in the past.

28 MR. CULLITON: That is right. In that
29 connection, the only jurisdiction I know that has it is
30 Saskatchewan where in some circumstances they reduce



1 the amount when they reach a certain age.

2 THE COMMISSIONER: What about the
3 Canada Pension Plan which has a disability provision
4 there? Won't the situation develop where a man will be
5 making more money off work than he will be at work? It
6 may be considered that there is no deduction for income
7 tax and various other things which he would have if he
8 was working.

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MR. CULLITON: There could be a possibility.

2 I have never delved into that, but speaking of the
3 individual on the railroad who is permanently disabled
4 he automatically suffers a cut in his earnings because
5 there are a lot of jobs that he can't do. All during
6 his life he has been unable to make greater earnings
7 than he should on account of his disability. So I
8 don't think it would be fair at the time of, say, 65 in
9 the latter part of his life that his pension should be
10 cut off because, after all, you can't buy pain in dollars
11 and cents.

12 THE COMMISSIONER: That is one of the
13 things that has been raised before.

14 MR. CULLITON: I hope you take
15 cognizance of that in your recommendations.

16 Are there any questions you would like
17 to ask me, Mr. Commissioner?

18 THE COMMISSIONER: No, except this: Do
19 I understand your submission to be that we should go
20 back to the old system where there is one appeal to a
21 Review Board and then the next appeal is to the
22 Workmen's Compensation Board Commissioners themselves?

23 MR. CULLITON: I would sooner see it
24 back under the other appeal system. I don't know really
25 why this new appeal system came into existence. It must
26 have cost a lot.

27 THE COMMISSIONER: I told you the
28 explanation that has been given us, that there were just
29 three Commissioners who were supposed to be running the
30 Workmen's Compensation Board with a lot of other



1 important duties such as investment of funds, assessment
2 of industry and all the other things, who were being
3 called upon at the same time to sit on the second field
4 of appeal and without knowing what the exact situation
5 was it seemed to me that they were in an impossible
6 position, ~~that~~ they were being called upon to do far more
7 than they were capable of doing under the old system.

8 MR. CULLITON: They might say they
9 celebrated their fiftieth anniversary and here it has
10 been satisfactory to both employers and employees. Now,
11 all of a sudden this new system comes in and we are
12 having difficulty with it. It speaks for itself, you
13 might say.

14 MR. GUTHRIE: I am wondering, Mr.
15 Culliton, if that would not be really a matter of
16 unfamiliarity with the system.

17 MR. CULLITON: In which way would it be
18 unfamiliarity?

19 MR. GUTHRIE: Well, you became used to
20 doing things in a particular way and you found certain
21 channels of communication changed. Is it possible that
22 perhaps the matter of this new procedure just needs a
23 bit of a shakedown and a little bit of working out, a
24 test, and in time you could become attuned to it? It
25 puzzles me when you say that a claim could be rejected
26 for lack of information, that you couldn't learn of that
27 until it had gone through to the appeal level. As we
28 have understood the evidence from the Board, there is a
29 particular section that deals mainly by telephone with
30 that very matter --- not just one labour representative,



1 but a whole battery of people who do nothing but try and
2 say, "We need more information", answering inquiries,
3 correct~~ing~~ problems and so forth, but I can't believe
4 that claims are rejected except because of a ~~d~~isentitlement
5 ruling.

6 MR. CULLITON: Would you explain what
7 you call a battery of union representatives?

8 MR. GUTHRIE: I didn't say union
9 representatives. I said a battery of employees of that
10 Board whose sole duty, as I understand it, is to answer
11 inquiries and to assist people to get claims moving and
12 going.

13 MR. CULLITON: Well, let us go back to
14 say a year and a half or two years ago --- say six years
15 since I was elected to this job. My predecessor
16 introduced me to Mr. Crisp, Mr. Colley and Mr. McClure
17 and Mr. Farquharson. These were the gentlemen we were
18 to deal with in any claims for the Brotherhood of
19 Railway Trainmen. I have no contact today with these
20 fellows. There is where the stalemate is. I could get
21 the information from these fellows and the claim would
22 be processed inside of ten days. Now it is taking
23 three weeks to a month to get an answer.

24 MR. GUTHRIE: You are saying really then
25 that you want to be able to go to a particular man or
26 one or two men with regard to all your claims rather
27 than having to deal with the individual claims officer
28 who may have a particular claim?

29 MR. CULLITON: I am saying this is what
30 we have done in the past. I don't want any flavouring



1 that by doing this we were getting favours or anything
2 like that. This was strictly business.

3 MR. GUTHRIE: That is not suggested.

4 MR. CULLITON: But this proved that we
5 could process a claim a lot faster than the claims are
6 being processed today.

7 MR. GUTHRIE: Mr. Cullition, can you tell
8 me in particular cases you have been familiar with how
9 long it has taken to get, say, from the rejection of a
10 claim to the review committee and then from the review
11 committee to the Appeal Tribunal? What lapse of time
12 have you experienced in actual cases that you have dealt
13 with?

14 MR. CULLITON: I won't go into specific
15 cases because there have been in all the cases I have
16 handled gradually the time growing longer and longer.
17 I would say to progress a claim to the top tribunal would
18 be over a month right now.

19 MR. GUTHRIE: By the top tribunal do
20 you mean the Appeal Tribunal?

21 MR. CULLITON: The Appeal Tribunal, yes.

22 MR. GUTHRIE: It strikes me that is
23 pretty prompt.

24 MR. CULLITON: We could do it inside of
25 six or seven days before.

26 THE COMMISSIONER: You are talking now
27 about your second level of appeal. Your second level of
28 appeal before in the days when you used to go to the
29 Board must have taken a substantial time.

30 MR. CULLITON: Well, we didn't go to the



1 Board because there was no necessity. By going to the
2 senior officers and asking them why they turned the
3 claim down was it medical and possibly a claim for lack
4 of information, a man gets hurt on the job, some clerk
5 in the yard office would fill out his 3903 or his
6 accident form. There would be a lack of information.
7 The claimant would be turned down, so we would write to
8 Mr. Crisp¹ or those fellows in the office who we were
9 dealing with and they would send us back the information.
10 So we would go to the yard office, go to the man, and he
11 would resubmit another form and the claim would go
12 through for compensation. Now today if it is turned down
13 where does it go --- it goes to the next step and it is
14 turned down. We are finding out a lot of these fellows
15 haven't been coming to us, they have been appealing it
16 on their own.

17 MR. GUTHRIE: What you are really saying
18 is, I think, that under your former system you were
19 really able to avoid the formal appeal structure all
20 together by means of an informal adjustment.

21 MR. CULLITON: There was no necessity
22 of going that high, that is right, we stopped at the
23 review committee.

24 MR. GUTHRIE: Perhaps it is not so much
25 the newness of the appeal system as against the old
26 appeal system as it is the problem of direct access to
27 Board members. I think that is the thing which is pin-
28 pointed, that one thing.

29 MR. CULLITON: I think this new system
30 is not working as good as the old system.



1 MR. GUTHRIE: The Commissioner suggested
2 if you have some examples of correspondence indicating
3 delays that you might care to send them down to us, Mr.
4 Culliton, and we would be glad to consider them.

5 MR. CULLITON: We can do that, yes.

6 THE COMMISSIONER: Thank you.

7 MR. GUTHRIE: Most of the employees
8 that your union represents are, I presume, covered by
9 Schedule 2 of the Act, the employers would be individually
10 liable to take compensation.

11 MR. CULLITON:; Yes.

12 MR. GUTHRIE: Perhaps I should not say
13 this, but it struck me you made no comment one way or the
14 other about that feature of the particular situation.
15 Have you anything to say on whether it works or it
16 doesn't, Schedule 2?

17 MR. CULLITON: Well, we have never
18 discussed this part of it and did not have it in our
19 brief, so I don't think that I could make any comment on
20 that whatsoever.

21 MR. GUTHRIE: Thank you very much. Do
22 any of your other members care to make any further
23 comments?

24 MR. MARTINDALE: I don't think so. I
25 think it would just be a repetition of what we have
26 already gone through. I think Mr. Culliton has really
27 done a remarkable job in covering everything and unless
28 Mr. Hounscome or Mr. Devlin has anything further to say.

29 MR. CULLITON: : Thank you very much.
30



THE COMMISSIONER: We will adjourn for

five minutes.

---Short recess.

MR. GUTHRIE: Mr. Commissioner, so far as I am aware there are still four parties present who wish to be heard briefly --- Mr. Burnett and his colleagues on behalf of the railways, Mr. Osler on behalf of International Nickel, Mr. Craigs of the Ontario Federation of Labour, Mr. Samson of the Construction Safety Association. I hope I am not omitting anyone else who still wishes to speak. I understand that all four intend to be brief and all four are hoping to be dealt with first and immediately, but I think we have ample time probably before the noon adjournment to hear them all, so perhaps Mr. Burnett and his colleagues would like to proceed with the brief comment they have now on the question of subrogation of third party liability.

MR BURNETT: I understand, my lord, that the City of Toronto yesterday filed a brief making certain recommendations, largely procedural, I believe, Most of it I have no comment on, I agree with, but there is one aspect that I think I should register a difference on. This relates to the point as to actions against third parties. Now, put briefly it is the recommendation of the City that any sums that are recovered in litigation in excess of the monies that have been paid by the employer one way or the other, administrative expenses, medical aid and compensation, should then become the property of the injured employee.



1 THE COMMISSIONER: It becomes his
2 property without any strings.

3 MR. BURNETT: Yes.

4 THE COMMISSIONER: I suppose what you
5 are about to suggest is that it should be returned as
6 a credit against any further compensation that might be
7 awarded?

8 MR. BURNETT: That is what we do in
9 practice, but I think the fundamental point, sir, is
10 the same as the Board --- you will notice that under
11 Schedule 1 any amount recovered by the Board is by the
12 statute paid into the fund, not to the Board as such.

13 THE COMMISSIONER: By statute that is the
14 case, but in practice that is not what they do, is it?

15 MR. BURNETT: Regardless of what they
16 do in practice the statute is that it goes to the fund
17 and thereby presumably it reduces the charges against
18 the entire class. I presume that would be the result of
19 it. We are talking about a fairly small group of cases
20 in the whole scheme.

21 THE COMMISSIONER: What is that section
22 of the Act, do you know?

23 MR. BURNETT: 9, sir, subsection (3) at
24 the top of page 4 of the printed copy. Subsection (3),
25 the last two lines, leaving out the first part:

26 "and any sum recovered by him
27 shall form part of the accident
28 fund".

29 THE COMMISSIONER: In practice, Mr.
30 Kerr, have we not been told that you do pay over the



1 excess amount to the man?

2 MR. KERR: That is correct, sir. We do
3 pay the excess amount to the injured person on the
4 understanding that it is a credit against any further
5 compensation payments or medical aid that might be
6 necessary in that particular case.

7 THE COMMISSIONER: Perhaps you are
8 exceeding your jurisdiction.

9 MR. BURNETT: Well, that is not my point
10 this morning. My point is that the proceeds have been
11 for years, and I think just because it is history does
12 not make it bad, have not been those of the employer
13 because we have to bear in mind this, that the employee
14 who is injured does have this election. He can proceed
15 in his own suit if he wishes to against a third party.
16 The action of the employer follows upon the election and
17 the matter of subrogation. He proceeds and if he
18 recovers less than the amount paid in compensation he is
19 just left with that loss. In most cases, in fact 100 to
20 1, there is no suit, no recovery, but by this means the
21 employer has a chance of gaining something in his own
22 fund for losses. If the employee is, as a matter of
23 right, entitled to have this excess, then, of course,
24 he can't really lose on that deal. If the railway goes
25 ahead and recoups themselves, they pay the expenses of
26 it, and if by chance they are successful and the employee
27 wins it, if by chance the railway is not successful, the
28 employee can say very naturally, "Well, that was a good
29 try, but it is their loss". I think the fundamental
30 thing is in the principle.



1 It has come before our courts in
2 the past. I don't want to quote law here this morning.
3 As your lordship is probably aware, there was an
4 exceedingly good review of all the principles --- I won't
5 try to read it this morning --- in Cooper and Canadian
6 Northern Ontario Railway Company in 1923, 55 O.L.R.,
7 256. It was a rather lengthy judgment by Mr. Justice
8 Orr but he reviews the entire principles of the matter
9 saying quite clearly that this extra fund is the
10 employer's. All I am suggesting here is in our cases
11 I think it is a matter of practice there is no question
12 that we first of all give the employee for certain the
13 amount that is spread between his compensation wage and
14 his actual wage, that goes to him. The other sum is
15 very often paid, but all I say is that it is at the
16 discretion of the employer to have it said that he must
17 give this back and you are distorting the entire system.
18 That is where I disagree with the brief of the City.
19 Mind you, I am fully cognizant of the fact that Mr.
20 Justice Roach ---

21 THE COMMISSIONER: It was also discussed
22 by Mr. Justice Roach.

23 MR. BURNETT: Yes, I am aware of that.

24 THE COMMISSIONER: He felt, and I can
25 understand the reasoning behind it, that it was wrong for
26 the employer to be able to recover and keep something
27 that was awarded for pain and suffering or due to
28 disability.

29 MR. BURNETT: With all respect, I think
30 where his lordship perhaps erred was that this is an



1 election that the employee has made. He can go on and
2 collect those amounts if he wishes, but he has taken
3 the sure step, the insured step of compensation. In a
4 sense under the new system he is going to get the best
5 of two worlds. I am not opposing that submission, but I
6 do say that the employer is entitled to this as the
7 Board is, and I would say the Board is charged with
8 allocating this excess to the fund and it goes to
9 reduce the charges that the employer has, be it the
10 Board on the one hand, or the employee on the other hand.

11 I think the lines are drawn on two
12 sides.

13 THE COMMISSIONER: I have the impression
14 that you were saying in many cases I thought you said in
15 practically all cases that you were actually returning
16 the excess as it is.

17 MR. BURNETT: In many cases, but it is
18 not the invariable rule, I would not say that, to go
19 against future claims.

20 I don't believe there were any other
21 points in the brief that we sharply differentiate from.
22 There is a suggestion, I am not quite clear what they
23 mean on page 6 where they suggest that the action should
24 be brought to recover the expenses of the employer. That
25 comes closer to the Quebec system really.

26 THE COMMISSIONER: It kind of gets pretty
27 involved. I mean if it is to recover the legal costs
28 that in some cases could be fairly easily arrived at,
29 but to get at the administrative costs it might become
30 involved.



1 MR. BURNETT: Perhaps it would not be
2 too involved, my lord. There would be about an 8 or 9
3 percent charge for those but there is this question that
4 is raised here. I must confess that in no third party
5 proceedings have I had any trouble in this regard, but
6 there is this distinction between compensation and
7 medical aid. Under Section 9 the action is a subrogation
8 action. Now, in fact it might well be said that the
9 employee who is injured did not himself lose the medical
10 expenses. I am thinking more of medical than I am of
11 the others.

12 THE COMMISSIONER: You support the
13 argument of the City of Toronto on that basis?

14 MR. BURNETT: Except that I think that
15 it should be done in here like the subrogation together
16 with the medical aid and administrative costs; in other
17 words, that is an annex to subrogation costs. We are
18 still back at Section 9 (3), my lord. If their action
19 is based solely on one of subrogation.

20 THE COMMISSIONER: What you want is a
21 definition of "compensation" somewhat larger?

22 MR. BURNETT: Well, not quite, my lord.

23 THE COMMISSIONER: Compensation as it
24 appears in this section.

25 MR. BURNETT: No, I don't think that is
26 quite my point, sir. The compensation as such loses all
27 its import when you come into a third party action. Then
28 you are only suing ---

29 THE COMMISSIONER: That is what I am
30 saying, in the third party action you want the definition



1 of "workmen's compensation" to include medical and
2 administrative costs?

3 MR. BURNETT: Believe me I am not
4 quibbling on this. When you are suing a third party you
5 are ~~suing for losses~~ sustained by the workman as such.

6 THE COMMISSIONER: Ordinarily you won't
7 indicate that there was any compensation paid at all.

8 MR. BURNETT: I don't think it even
9 comes into it because the courts have said that is not
10 relevant.

11 THE COMMISSIONER: You are suing for his
12 wages.

13 MR. BURNETT: And his pain and suffering
14 and everything he would be entitled to in common law.
15 But a defendant in that action who is the wrongdoer, as
16 the brief says here, can say, "Well, this is subrogation,
17 he incurred no expenses for medical, no obligation".
18 All I am suggesting here is ~~that~~ in addition to the
19 subrogation of right the employer also has the right to
20 add to that in the subrogation action "including medical
21 expenses, medical aid, in addition to subrogation", to
22 clarify it that the action is not only for subrogation
23 of the rights of the workman because in that case there
24 would be no right possibly to claim against the
25 wrongdoer who has done the damage for medical aid. There
26 is no reason in the world why the wrongdoer who has
27 injured the workman should not have to reimburse for the
28 medical aid that he caused.

29 THE COMMISSIONER: I understand the
30 criticism. I think there should be some clarification



1 and I am just trying to find out from you how you suggest
2 it should be worded.

3 MR. BURNETT: Well, I would think
4 subsection (3) of Section 9, at the top of page 8:

5 "is subrogated the right to maintain
6 an action and a means for and against
7 it", et cetera, et cetera, " and
8 the right to reimburse for medical
9 payments".

10 And, if you wish: "the administration costs".

11 MR. GUTHRIE: I think this is the point
12 the City makes at the top of page 6 of its brief, Mr.
13 Burnett, is it not?

14 MR. BURNETT: I think in part it is, but
15 he seems to be going --- in other words, I am not saying
16 that we should be claiming for all payments made to or
17 on behalf of the workmen. That would include compensation.
18 You see, in that action the plaintiff is not claiming
19 compensation in the way it is defined in the Act: He
20 is claiming loss of wages, pain and suffering. I think
21 the City here when they wrote this one were thinking of
22 the alternative method they are suggesting here of
23 bringing an action only for the payments that have been
24 made which is very similar to the Quebec system --- two
25 actions, one by the employer to recover the amounts that
26 we have paid or the capitalized value that has been paid
27 and then there is another action by the defendants for
28 the ancillary losses, that is a secondary action.

29 THE COMMISSIONER: What is the suggested
30 amendment that you made --- "such action" ---?



1 MR. BURNETT: "Such action may include
2 a claim for medical aid", and I would add "administration
3 expenses" whether or not such have been incurred by the
4 workman.

5 THE COMMISSIONER: Whether or not there
6 were claims for which the workman was personally liable?

7 MR. BURNETT: Yes.

8 THE COMMISSIONER: Thank you.

9 MR. BURNETT: I think those are the only
10 points that I wish to draw to your lordship's attention
11 in the brief. The rest of it I concur with. I would not
12 ~~go~~ against their proposals.

13 MR. OSLER: Sir, at the time we last
14 appeared Mr. Estey asked me the question, if I recall ---
15 I am sorry I don't see him here today --- he asked me a
16 question in regard to Tables 10 and 11, the figures which
17 had been supplied by Mr. Kerr, I think, to the
18 Commission which ~~were~~ not seen at that time. These were
19 subsequently supplied to me by Mr. Kerr and those tables
20 related to the number of compensable cases, 1960-1965 for
21 the rate numbers 076 which is our nickel rate 305, the
22 motor vehicle, and Schedule 1.

23 THE COMMISSIONER: You didn't notice
24 what exhibit numbers they went in under, did you?

25 MR. OSLER: I couldn't tell you, sir.
26 I think they were sheets filed by the Board, sir, tables.
27 I don't think they went in as an exhibit.

28 Sir, I have very little to say. I
29 believe the question Mr. Estey was going to ask was how
30 would I account for the increase in the cases that appear



1 in Table 10 from a low in 1963 to the rather high figure
2 in 1965 provisional, jumping from 900 up to 1,800.

3 Basically, I don't think we can supply
4 an explanation.

5 THE COMMISSIONER: I am not following you.
6 We are looking at Table 10?

7 MR. OSLER: Table 10. You see, in 1963 ---

8 THE COMMISSIONER: 1963 the number of
9 cases was 967.

10 MR. OSLER: And in 1965 provisional
11 1,845.

12 THE COMMISSIONER: Yes.

13 MR. OSLER: I believe the question Mr.
14 Estey asked me originally was how would I account for
15 this apparent sharp increase in these cases during that
16 short period from 1963 to 1965. I am afraid I have not
17 got a positive answer because we cannot accept any of the
18 reasons which might have been advanced. There has not
19 been an increase in new men, I think our tables that we
20 filed are Exhibits 26 and 27 which indicate that it is
21 not a question of older men in the employees suddenly all
22 going into compensable cases ---

23 THE COMMISSIONER: Did you say no
24 increase in employment?

25 MR. OSLER: In the two years 1963 to
26 1965, yes, the employment went up by about 2,000 men,
27 it went up about possibly 25 percent, but don't forget
28 this was a matter of there were men being recalled to
29 work as well as new men being hired during that period
30 of increased employment which took place specifically



1 in 1964. In relation to other years there is no such
2 definite increase of new people being unfamiliar with the
3 workings which would account for this great increase.
4 There has been no introduction of some machinery or
5 works which was of such an unusual nature as would account
6 for it. The safety steps that have been taken by the
7 company are those which primarily had been in existence
8 for a number of years. There was no lack of safety
9 instruction or safety steps. So that our report really
10 is, sir, that we cannot attribute this to any particular
11 thing. We have suggested that insofar as the allowable
12 cases are concerned the change in the Act, of course,
13 might have had something to do with it.

14 THE COMMISSIONER: The only way that you
15 can account for it is the change in the Act that widens
16 the field of the definition of "accident"?

17 MR. OSLER: And I think as such our
18 feeling is that there have been claims made which
19 have been sufficiently wide that it is recognized that
20 the field is wider. That was the only question asked by
21 Mr. Estey.

22 MR. GUTHRIE: Just on that last point,
23 Mr. Osler, you mean that as it becomes known among the
24 work force that the interpretation is broader this may
25 actually encourage claims that would otherwise not have
26 been filed?

27 MR. OSLER: There is no other logical
28 explanation.

29 MR. GUTHRIE: I think you already dealt
30 with the question about whether it had anything to do with



1 the ageing of the work force.

2 MR. OSLER: We examined that and I think
3 we found in our exhibit, I think Exhibit 26 or 27,
4 information which would indicate that basically,
5 certainly in the back tests, it is the degree of
6 frequency in the younger men than in the older men.

7 THE COMMISSIONER: When did the change
8 in the Act occur?

9 MR. OSLER: 1963, sir.

10 THE COMMISSIONER: And your experience
11 from 1950 to 1963 was that your accident rate was
12 improving year by year?

13 MR. OSLER: It has increased almost 100
14 percent in the last two years.

15 THE COMMISSIONER: It certainly goes up
16 100 percent within two years.

17 MR. OSLER: That is right.

18 THE COMMISSIONER: Thank you.

19 MR. GUTHRIE: Mr. Osler, were there some
20 other matters that you wanted to refer to in the
21 transcript?

22 MR. OSLER: No, I had discussed with the
23 company a few odd matters, but I thought I would perhaps
24 write a letter to Mr. Estey because they are so petty
25 and I don't think it is worthwhile wasting the time of
26 the Commission. I hope to finish the letter this
27 afternoon and it will be in your hands tomorrow morning.

28 MR. GUTHRIE: Thank you, Mr. Osler.
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5/BL/SS

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Mr. Craigs (Ontario Federation of Labour)

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MR. CRAIGS: My face, of course, is familiar to you. This is Mr. Henry Weisbach.

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Mr. Commissioner, since you have opened these hearings we have canvassed our affiliates, some 1,200 of them, and as a consensus we have two main points we would wish to bring to your attention.

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THE COMMISSIONER: You say you have 1,200 affiliates?

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MR. CRAIGS: Yes, which represents about 1,500 members. There are two main points about The Workmen's Compensation Act of Ontario which the membership is greatly concerned with. With your permission, the first one is Section 41, sir.

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It is our contention, Mr. Commissioner, that a workman obviously must be on a payroll and performing his regular work to be entitled to benefits under the provisions of the Act. Therefore, it is our opinion that the Act was intended to provide full compensation benefits until such time as the workman was ready to return to his regular employment or until he was in a fit condition to obtain employment through his trade union or the National Employment Service, or what is now known as the Manpower Service.

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Surely we cannot expect some other employer or even his own employer to make a position for him during the balance of his period of temporary disability. Many employers just could not make a suitable temporary job, and in the case of construction workers, workmen in bush operations and somewhat similar



1 types of employment, it is practically impossible to have
2 some other employer provide some type of work other than
3 the man's regular duties for some temporary period.

4 We recommend that serious consideration be given to the
5 abolition of Section 41 as it applies to the 50% payment
6 of compensation due to a man's ability to perform light
7 work.

8 THE COMMISSIONER: What is the situation
9 in other provinces? Have you given consideration to that?

10 MR. CRAIGS: No, sir, we haven't. We
11 have been primarily concerned with the situation in
12 Ontario.

13 The other question is the question of
14 the Appeals Tribunal. It has become evident as you have
15 sat through these hearings that there is a change in
16 the administration of the Board's operations which is
17 causing a great deal of heartburn, to say the least of it.
18 I would draw your attention, sir, to the fact that Sir
19 William Meredith, in recommending the type of system
20 which has been in effect in Ontario for some years,
21 highlighted the proposed system by stating it was his
22 intention that the system would provide speedy justice.
23 The new appeal system through which a workman must
24 process his claim has not made a significant contribution
25 to speedy adjudication of a claim.

26 THE COMMISSIONER: We keep hearing this.
27 The Board contends that it is speedier. They deny that
28 there are any delays. Now, as to the situation at the
29 appeal level, again it is denied that it is any slower
30 than it was, that it may be faster than it was, that is in



1 days when the last court of appeal was the Board itself.
2 Is what you mean to say tht the delay in the time when
3 the man can be heard personally or can have a personal
4 hearing before the Board is much longer than it used to
5 be?

6 MR. CRAIGS: Yes, this is essentially
7 our position, sir. When this new system was originally
8 introduced there was, as in any other situation where
9 substantial change is made, a considerable amount of
10 disruption. A new chairman took over and he brought new
11 ideas with him, and there was obviously needed a shake-
12 down period when the subordinate staff could become
13 acquainted with the new system. There is always the
14 difficulty when changing from a long-established system
15 to a new system. There were initial difficulties at the
16 first stage of the claim due to this changeover. While
17 it is true, and I don't deny it, that the time in which
18 there is a rejection of a claim and it is sent to a
19 review board may not be significant, we find that the
20 main difficulty is between the review board and the
21 Appeals Tribunal. It follows, Mr. Commissioner, where
22 a group of three individuals are wholly concerned with the
23 adjudication of appeals, are required to travel all over
24 this province, we do not think that it is possible for
25 them (a) to receive these claims due to sheer work load,
26 that there must be correspondence between the decision
27 of the Review Committee and the decision of the workman
28 to appeal his claim. An Appeals Tribunal should review
29 the files before it actually hears a claim. This
30 obviously is a time factor, too, and, as a result, all



1 along the line there is an accumulation of delays. We do
2 not say these are deliberate, but it is due to the
3 procedure, due to bureaucracy, perhaps.

4 THE COMMISSIONER: One would have
5 expected to hear from labour representatives that this
6 new system of taking the appeal out to the sticks, so
7 to speak, taking it to the various parts of Ontario,
8 would have been appreciated as maybe an improvement, but
9 I haven't heard any comment about it at all.

10 MR. CRAIGS: The only trouble is that
11 the Appeal Tribunal cannot be in two places at once; it
12 cannot be in Windsor and Kapuskasing simultaneously.
13 This element in procedures must produce delay; and I
14 think it is true, without being overly sentimental about
15 it, that it causes anguish, and it often produces hard-
16 ship in many cases. In fact, if I go over the page, sir,
17 we make the point that with three, perhaps four, hearings
18 a day before the Appeal Tribunal, there is little time
19 to spare for the more contentious cases. As a result,
20 we feel that many workmen feel thwarted. If, in your
21 judgment, the present system should be retained we would
22 urge that you consider the establishment of a second
23 Tribunal in order that one of them be "on tour"
24 constantly.

25 THE COMMISSIONER: That is the first
26 time I have heard that suggestion. It sounds as though
27 it may be a reasonable suggestion, but perhaps the Board
28 should be allowed an opportunity to show that this
29 system can work and can work to the satisfaction of your
30 people, in which event a suggestion of this kind might



1 be of substantial value.

2 MR. CRAIGS: Well, I do quite a bit of
3 representation, as Mr. Kerr knows, and in my experience
4 in the province they are becoming perhaps a little
5 arduous. The comprehension, the education, the under-
6 standing of a workman in, say, Kenora is not necessarily
7 that of a fairly sophisticated fellow who works at the
8 Ford Plant at Oakville. There is also this question of
9 the feeling of remoteness. Northern Ontario feels
10 extremely neglected, rightly or wrongly, but it feels
11 so. I have a case in Dryden which has been going on for
12 three years, and the Act requires that this claimant,
13 in order to be heard before the full Board, must be
14 heard here, and he must come from Dryden at his own
15 expense. He must come to Toronto for the full Board.

16 THE COMMISSIONER: The full Board is
17 how many people?

18 MR. CRAIGS: The Chairman, the Vice-
19 Chairman and the Commissioner.

20 THE COMMISSIONER: I understood what
21 you were talking about here was a branch of the Appeal
22 Tribunal.

23 MR. CRAIGS: Yes, sir. I merely drew
24 that illustration to show the feeling of remoteness and
25 the difficulty and hardship that can be entailed.

26 THE COMMISSIONER: In other words, what-
27 ever we might eventually end up with, you would approve
28 of some measure of travel being continued.

29 MR. CRAIGS: If, in your judgment, the
30 tribunal system should be maintained, then quite obviously



1 one tribunal is not enough.

2 THE COMMISSIONER: If it wasn't maintained
3 and we are back to the old system, there would be nobody
4 travelling around, would there?

5 MR. CRAIGS: No, sir.

6 There is just one remaining point that
7 the membership has expressed concern about, and that is
8 the tendency towards formality in hearings.

9 THE COMMISSIONER: I suppose it is
10 inevitable. The bigger an organization gets the more
11 lack of personal contact you get.

12 MR. CRAIGS: I wouldn't want to instruct
13 an eminent jurist like yourself, sir, but I think it is
14 important we recognize one basic thing, that where
15 formality creeps in there is a tendency for the adversary
16 system to introduce itself.

17 THE COMMISSIONER: And a tendency to
18 bureaucracy, too; you have a ladder.

19 MR. CRAIGS: Yes. This may seem
20 difficult for many people to grasp, that there is a very
21 real concern, almost a fear, that the adversary system
22 will creep in and this leads to the introduction of
23 legal counsel and the laws of examination and cross-
24 examination.

25 THE COMMISSIONER: Everybody agrees
26 that that should be avoided if possible. But what we
27 are up against is how are we going to handle the volume.

28 MR. CRAIGS: We took the liberty of
29 drawing this to your attention, because there is quite a
30 consensus of feeling in our membership on these three



1 points.

2 THE COMMISSIONER: You recall this
3 inquiry by the Labour Safety Council and the Accident
4 Prevention Associations in 1965. This report only came
5 to my attention in the last several weeks. I see that
6 during the course of that inquiry the Ontario Federation
7 of Labour reported that they had a question sent to their
8 unions regarding safety committees in the plants, how
9 many had safety committees in the plant, how many there
10 were where there were union representatives appointed to
11 the committee, and how many collective agreements as to
12 safety, and how many cases there were where the local
13 union on safety education worked. There was a very
14 interesting comment on the situation at that time. That
15 situation would be probably in 1964. Have we had anything
16 since that time?

17 MR. CRAIGS: Mr. Weisbach is a member
18 of the Safety Council, sir.

19 THE COMMISSIONER: This was an excellent
20 effort by the Safety Council.

21 MR. WEISBACH: I just want to say that
22 since the report of the Safety Council has been
23 published a new Safety Council has been appointed. But I
24 was the person in the Federation who sent out the
25 questionnaire and made the particular summary for the
26 Council. I don't recall the exact percentage, but I think
27 it was 30% or 40% of our local unions who took part in
28 active safety education.

29 THE COMMISSIONER: Your memory is very
30 good, because it says 32%.



1 MR. WEISBACH: Since then, of course,
2 this has changed considerably because the efforts of the
3 Federation in the field of safety education have been
4 stepped up to a large extent. I would say the
5 percentage of local unions and similar labour bodies
6 participating in safety education is considerably higher.
7 I couldn't offhand say what percentage it is.

8 THE COMMISSIONER: In other words, the
9 labour unions realize that always in the past they hadn't
10 done as much and they are now prepared to do as much as
11 they can to make it go now.

12 MR. WEISBACH: That is correct. I think
13 we admitted quite openly at the Safety Council at that
14 time that we possibly did not always pull our share, but
15 since then we have participated more in the activities.
16 Also I think it can be said we have established a some-
17 what closer cooperation with the Safety and Accident
18 Prevention Associations. I think there is an actual
19 exchange of ideas takes places more than it has up to
20 this time. But it is progressing satisfactorily.

21 THE COMMISSIONER: Thank you very much,
22 Mr. Weisbach.

23 MR. GUTHRIE: Mr. Samson.

24 MR. SAMSON: Mr. Commissioner, I have
25 left with you a copy of a letter that I would like to
26 read, if I may, dated November the 28th, to the
27 Honourable George A. McGillivray, The Royal Commission
28 on The Workmen's Compensation Act.

29 THE COMMISSIONER: You are reading in
30 a letter. This is your own letter.



1 MR. SAMSON: Yes, sir.

2 We would like to reply to the Royal
3 Commission in connection with our appearance on November
4 2nd.

5 In the first instance we would like to
6 draw attention to two errors in the transcript of the
7 hearings of that day - namely on page 2827 - line 13, the
8 figure should read 4,949 laborers rather than 499.

9 On Page 2833 on line 28 it should read
10 "approximately 25" rather than 85. There are
11 approximately 25 different craft unions in the
12 construction industry and over 500 "locals" in the
13 province.

14 We would like to draw the attention of
15 the Royal Commission to allegations made by Mr. Gallagher
16 both in the press and in the transcript. We are
17 attaching a photostat of an article in the Toronto
18 Telegram dated November 3, 1966, with the caption
19 "Laborer's Union Accuses Safety Head". On page 2860 of
20 the transcript - line 12 Mr. Gallagher quotes "and I feel
21 very strongly that the presentation this morning is not
22 very accurate".

23 Contrary to the allegations of Mr.
24 Gallagher in the press and in the transcript our testimony
25 was accurate. Mr. Gallagher's statement is irresponsible
26 and has made an attempt to mislead the Commission.

27 In the newspaper article I have been
28 accused personally of misinforming the Commission. This
29 is wrong. Mr. Gallagher as quoted in the article in
30 the Telegram - "I feel very strongly that the information



1 this morning was not very reliable," he told the chairman
2 Mr. Justice McGillivray, concerning safety inspectors on
3 subway jobs. "There is not a TTC inspector at all and
4 what safety inspectors there are are dominated by the
5 contractors." At no time did we say that the TTC have
6 a safety inspector on the subway. Our understanding is
7 that the TTC do not have a safety director but ~~that~~ it is
8 a "condition of contract" with the contractors that they
9 must supply safety directors while performing contract
10 work on the subway. The contractor hires a safety man for
11 the job and the contractors pays his wages. The innuendo
12 that the safety directors are dominated by the contractors
13 is wrong. They are employed by the contractors and paid
14 by the contractors. The only inspectors on the subway
15 are either municipal or provincial and they have the
16 power of enforcement.

17 The safety program is not under the
18 thumb of the contractor. The contractor's responsibility
19 is to provide proper safety programming.

20 The article in the Telegram referred
21 to herein quotes Mr. Gallagher as saying that the writer
22 is hired by the contractors. This is not true. The
23 General Manager of the Construction Safety Association
24 of Ontario is hired by the elected directors of the
25 Association and the General Manager is not responsible
26 to any contractor but rather to the elected directors
27 of the Association. The objective and responsibility
28 of the Association is not strictly to the contractors but
29 to some 200,000 construction workers in the industry.

30 Further Mr. Gallagher is quoted "He is



1 only an image (Samson). His association is not
2 effective and never will be until the laborers are
3 represented." This is a complete fallacy. The
4 Association is indeed effective and the fact that it is
5 directed by some 58 contractor-directors shows maturity
6 and a responsible attitude in this province towards the
7 safety of men on construction sites.

8 Again Mr. Gallagher is quoted "Why, if
9 this was so successful, doesn't his association continue
10 to work with us all year round?" This was in reference
11 to a safety crusade in Toronto last May.

12 Mr. Gallagher asks the question and then
13 answers it himself - "It's because it wants to keep
14 control under management."

15 The fact of the matter is that we do
16 work with labour the whole year round. The safety of the
17 labour force and every man in the construction industry
18 is our whole concern. Management provides the safety
19 education for the industry. The objectives are single.
20 The creation and development of effective safety
21 education for both construction workers and the contrac-
22 tors. It is paid by management through their assessments
23 to the Workmen's Compensation Board.

24 Because these allegations have appeared
25 in the public press as well as in the transcript of the
26 Royal Commission proceedings we strongly request that our
27 rebuttal be recorded.

28 In all common decency we would expect a
29 retraction by Mr. Gallagher of these allegations so that
30 they may be included in the records of the Royal

Commission.

We respectfully submit this request.

Laborer's Union accuses safety head

THE TELEGRAM, Toronto, Thurs., Nov. 3, 1966

Gerald Gallagher, Toronto secretary of the Laborers' International Union, yesterday accused the general manager of the Ontario Construction Safety Association of misinforming a Royal Commission on the Workmen's Compensation Act.

I feel very strongly that

the information this morning was not very reliable," he told chairman Mr. Justice McMillivray, concerning safety inspectors on subway jobs.

"There is not a TTC inspector at all and what safety inspectors there are are dominated by the contractors," Mr. Gallagher said.

Later, he said the board must take charge of the safety program to get it "from under the thumb of contractors."

Gilbert Sampson of the Construction Safety Association is hired by the contractors," Mr. Gallagher said.

"He is only an image. His association is not effective

and never will be until the laborers are represented."

Mr. Sampson earlier told the commission that a safety crusade in Toronto last May had proved very effective, partly because of the assistance given by labor.

"Why, if this was so successful, doesn't his association continue to work with us all year round?" questioned Mr. Gallagher and then answered himself.

"It's because it wants to keep control under management."

Hearings ended today but Mr. Justice McMillivray said he would be available later in the month for any new evidence.

Mr. Gallagher immediately said his union would take advantage of this, but the commissioner warned him he would not allow "any personal remarks."



1 THE COMMISSIONER: As far as the last
2 paragraph is concerned, we told Mr. Gallagher that we
3 were not going to get into name-calling here; and I
4 think by the same token this Commission is not concerned
5 with whether Mr. Gallagher makes a retraction or whether
6 he doesn't, whether he makes an apology.

7 MR. SAMSON: Well, my first reaction and
8 the reaction of my directors was that we would ignore
9 this, but then we began to feel that this is a permanent
10 record.

11 THE COMMISSIONER: You are quite
12 justified in coming here and reading into the record
13 what you read in, with the exception of the last
14 paragraph, which I don't feel is necessary. I don't feel
15 we are called upon to comment on it.

16 MR. SAMSON: I would like to leave with
17 the Commission a report of a study of Construction
18 Safety Advertising Penetration conducted in November,
19 1965, by Canadian Facts Limited.

20 MR. GUTHRIE: If I am not mistaken, Mr.
21 Samson, that was something you were asked to file.

22 MR. SAMSON: Yes, that is right, and I
23 don't think we had done so.

24
25 ---EXHIBIT NO. 52:

Report of a Study of Construc-
tion Safety Advertising
Penetration dated November,
1965, conducted by Construction
Safety Associations.

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29 MR. GUTHRIE: Mr. Commissioner, I think
30 that all parties interested in making any sort of



1 rebuttal or reply have been afforded an opportunity to
2 do so and have been heard. But before the hearings close,
3 Mr. Kerr of the Workmen's Compensation Board would like
4 to make a brief closing statement to the Commissioner.

5 MR. KERR: Mr. Commissioner, the Board
6 and staff members of the Workmen's Compensation Board
7 are dedicated to service and provide service for the
8 injured of the working people of Ontario. In so doing we
9 also provide service for the employers of Ontario. This
10 service takes place both before the accident occurs and
11 after the accident occurs. The service that we provide
12 in the field of safety education is most important
13 because we also believe it is better to stop an accident
14 than to compensate a man having an accident. We are
15 also interested in continuing our education service so
16 that employers and employees know how to prevent
17 accidents and how to process claims due to accidents in
18 employment. Seminars are conducted by management and by
19 labour, and we are most interested in continuing our
20 activities so we can spread information about The
21 Workmen's Compensation Act and what is required to
22 enable a man to process his claim with the minimum of
23 delay to obtain benefits.



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It is all in the Act to provide claims, rehabilitation and medical services and this is our major responsibility because it fulfills the very purpose and reason for having a Workmen's Compensation Act. We also realize in carrying out our responsibilities and providing these services that we must do it in an economical, efficient and humane manner. Any compensation plan requires the complete cooperation of all of those involved---the Workmen's Compensation Board, the employers, the doctors and treating professions of Ontario who provide the treatment facilities for us and in most cases the cooperation of labour since so many men are members of labour unions.

This cooperation we feel we have generally with all groups concerned and it is most important that this kind of cooperation continue in the future if we are to be most effective in our work to assist the injured people.

The Board and staff members are aware of their responsibilities to the employees and to the employers and we will continue to provide the best service possible in an efficient, yet cordial and humane manner. In dealing with injured workmen we do not regard them as statistics or claim numbers but as human beings who come to us with a problem.

Mr. Commissioner, it has been a pleasure for the Board and senior staff members to present to you information concerning the various subjects that have come under review before you.

Thank you, sir.



1 THE COMMISSIONER: Before you go away,
2 Mr. Kerr, we have been again on this appeal procedure
3 this morning. Let me recall what the situation is.
4 How many review committees are there?

5 MR. KERR: This is one review committee,
6 sir.

7 THE COMMISSIONER: Sitting in sections,
8 is it one or does one review committee review all claims?

9 MR. KERR: One review committee handles
10 all appeals going through that level.

11 THE COMMISSIONER: How many appeals a
12 day can that committee handle?

13 MR. KERR: I would have to consult the
14 records. I believe that was submitted as evidence.

15 THE COMMISSIONER: It ran in my mind
16 that somebody said ten.

17 MR. GUTHRIE: Mr. Poole said that in
18 evidence, ten. There are nine members on that committee.

19 THE COMMISSIONER: And I believe you
20 also gave evidence that if you are having to hear
21 representations at that level that that would substantially
22 delay the processing of these appeals.

23 MR. KERR: Yes, it would, sir. Either
24 that or you would have to increase the number of
25 personnel on the review committee.

26 THE COMMISSIONER: That is what was
27 running through my mind. I mean to say, even as things
28 are with the number of cases you have I don't know how
29 ten a day gets you through the number of appeals that
30 you told us this morning which you got.



1 MR. KERR: I don't think we stated the
2 number of appeals this morning, sir; we stated the
3 number of rejections. But they are not all appealed.

4 THE COMMISSIONER: In any event, in the
5 course of a year you are able to get through on ten a
6 day the number that you have been having as appeals?

7 MR. KERR: Our evidence which was
8 submitted by Mr. Poole, if I recall correctly, indicated
9 that usually it takes about a week for a decision to be
10 made on the review committee unless it is necessary to
11 conduct further investigation.

12 THE COMMISSIONER: It might not be fair
13 to put these questions to you, but this matter this
14 morning --- and we have heard it so often --- there is
15 a sort of loss of contact with the Board until they hit
16 the final hearing before the Appeal Tribunal. One
17 wonders if there was some method either by increasing
18 the number on your review committee or some other way of
19 allowing these union representatives or others to come
20 in and make those representations and learn what the
21 picture is at that stage.

22 Let us go to another thing. At the
23 moment if they want to, as they say in the past they
24 have been able to learn what the trouble was, either that
25 it was a non-report or something else and as a
26 consequence be able to advise and maybe avoid an appeal.
27 Supposing they ---- well, at the moment that matter of
28 answering questions in the Board itself has been taken
29 away from the actual people who decide the claims, I
30 understand, is that right?



1 MR. KERR: We have a special group, the
2 administrative group.

3 THE COMMISSIONER: It is there for the
4 sole purpose ----

5 MR. KERR: ...of providing information
6 and answering inquiries to let people know where their
7 claim has failed.

8 THE COMMISSIONER: They are close to the
9 claim decision people and they can get this information
10 quite rapidly and they can tell them wherein their
11 claim has been found to be deficient at that stage
12 before it goes on to the Board of Review.

13 MR. KERR: That is correct, sir. This is
14 a service which is provided.

15 THE COMMISSIONER: And I suppose it
16 is too much to ask you for your comment about this thing
17 becoming more and more formal.

18 All right, thank you.

19 MR. KERR: I think it has been stated
20 that the attempt is to conduct the hearings in an
21 orderly manner. I think that is as far as I can go at
22 this stage, sir.

23 THE COMMISSIONER: Well, I might have
24 been wrong, but I did not understand the criticism to be
25 about the way in which the actual hearings in the Appeal
26 Tribunal are held; I thought it was more throughout that
27 this was getting more and more formal and less and less
28 personal contact.

29 MR. KERR: Well, there is no doubt that
30 we do have the three-level appeal system as compared with



1 the two-level appeal system that we had before and we do
2 have an information service, a group, whereby anyone can
3 make inquiry to determine what is required and why his
4 claim was rejected, what is needed to have it
5 reconsidered or what is needed to bring it within the
6 terms of the Workmen's Compensation Act. We have many
7 inquiries, even when a claim has not been submitted ----
8 what constitutes a claim arising out of and during the
9 course of employment. This is common knowledge and
10 everybody should be aware of it, as to the interpretation
11 of these factors. This is part of our ongoing educational
12 program, so that people will know what constitutes an
13 allowable claim under the Act. This is one of the big
14 advantages of senior officials of the Board being invited
15 by labour and by management to take part in their
16 seminars.

17 THE COMMISSIONER: Then, what about the
18 travelling appeal board? Is there any way of keeping
19 them abreast of work that is going to come up next week,
20 or do they have to come back to Toronto and settle down
21 to study this?

22 MR. KERR: Well, there is a Secretary to
23 the Appeal Tribunal and one of his functions is to
24 schedule the hearings. As has already been stated, these
25 hearings are not only held in Toronto, but also
26 throughout the province and it takes --- I think our
27 latest figures show that in most cases hearings are held
28 within four weeks from the time they are scheduled for
29 a hearing. I use the phrase "when they are scheduled
30 for a hearing" because many hearings are not held



1 promptly due to a request of the person representing the
2 injured workman, that they would like more time to
3 prepare their case and when they are ready they will
4 then ask for a hearing to be scheduled. When a hearing
5 is asked to be scheduled it is usually held within four
6 weeks from the time that the request has been made to
7 schedule a hearing.

8 It is also true that the members of the
9 Appeal Tribunal must study the claim and the information
10 in it before the hearing is held.

11 THE COMMISSIONER: You find that
12 necessary, do you?

13 MR. KERR: Yes, sir.

14 THE COMMISSIONER: They don't sit, then,
15 I take it five days a week on hearings?

16 MR. KERR: Well, there is time lost in
17 travelling and, of course, when they come back to the
18 office for preparation of cases.

19 THE COMMISSIONER: Thank you. Have you
20 any questions, Mr. Guthrie?

21 MR. GUTHRIE: No, sir, I haven't.

22 Thank you, Mr. Kerr.

23 THE COMMISSIONER: Now, there being no
24 further material to come before this Commission I am now
25 able to bring the hearings to a close. We have continued
26 pretty steadily ever since the 26th of September, so we
27 feel that all those interested should have had an
28 opportunity of being heard. In the course of this long
29 series of hearings we have acquired a great mass of
30 evidence which has to be considered and digested in any



1 report that must come from the Commission and this is
2 something that cannot be done in a hurry apart from the
3 fact that I try to carry on duties with the court as well.
4 As a consequence, I cannot promise that this report is
5 likely to be out in a short period of time. All I can say
6 is that I will do the best I can because I don't want it
7 hanging over my head any longer than necessary.

8 I thank all those who have been of
9 assistance to me in the course of this Commission,
10 particularly counsel and Mr. Johnston. I have also had
11 from the Board itself the utmost cooperation on anything
12 we have asked them to produce here and give in evidence.
13 I need hardly say that the labour unions, too, have been
14 very helpful throughout this whole inquiry in the manner
15 and the type of thing we have heard today.

16 So that concludes the hearings of this
17 Commission.

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19 ---Adjourned.
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